SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 96

TOM ESKRIDGE, PETITIONER,

vs.

MERLE E. SCHNECKLOTH, SUPERINTENDENT OF THE WASHINGTON STATE PENITENTIARY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

INDEX

	Original	Print
Proceedings in the Supreme Court of the State of Washington in Case No. 33928	1	1
Praecipe for record	1	1
Stipulation as to record	2	2
Motion for leave to proceed in forma pauperis, affidavit in support thereof and order granting same	5	5
Petition for a writ of habeas corpus	6	6
Respondent's return and answer	13	15
Petitioner's reply to respondent's return and answer	16	17
Exhibit No. 1—Letter from Judge Ralph P. Edgerton to Tom Eskridge, dated December 19, 1952	22a	23
Exhibit No. 2—Letter from Clerk of Superior Court, Spokane County, to Tom Eskridge, dated December 29, 1952	23	24
Respondent's memorandum	24	25
Order denying petition for writ of habeas corpus	74	32
Letter from Clerk, Supreme Court of Washington, to Tom Eskridge, dated October 3, 1956	75	33
Motion for rehearing en banc	76	34
Order denying petition for rehearing	77	35

	Original	Print
Proceedings in the Supreme Court of the State of Washington, in Case No. 26088, State v. Eskridge (Excerpts from)	78	36
Transcript of record from Superior Court of the State of Washington in Case No. 11114, State v. Eskridge	81	36
Verdict of guilty	81	36
Special verdict	82	37
Motion for new trial	83	37
Motion for an order extending time in which to prepare and file affidavits, etc.	84	38
Affidavit of W. C. Donovan, etc.	85	39
Motion for an order in arrest of judgment	88	41
Affidavit of Leslie M. Carroll in resistance of motion for new trial	89	41
Issue of law	90a	43
Order denying motion for new trial and motion for an order in arrest of judgment	91	43
Judgment, sentence and commitment upon verdict of guilty	92	44
Journal entry of oral notice of appeal	93	45
Letter from defendant requesting transcript	94	46
Motion resisting application for a transcript at pense of Spokane County	96	47
Pauper oath of Thomas Eskridge	98	49
Letter from Judge Fred H. Witt to Eskridge, dated January 3, 1936	99	50
Letter from Eskridge to Judge Fred H. Witt dated January 7, 1936 with envelope attached	100	50
Letter from Judge Fred H. Witt to Eskridge, dated January 10, 1936	102	52
Letter from Eskridge to Judge Fred H. Witt, dated January 15, 1936, with envelope attached	103	52
Affidavit in support of request of transcript of evidence and abstract of the record for appeal, and motion, therefor	107	54
Motion and affidavit of Leslie M. Carroll resisting request for transcript of record	112	58
Affidavit of A. J. Donovan	115	60
Letter from Judge Fred H. Witt to Eskridge, dated January 20, 1936	118	62
Order denying application for transcript at expense of Spokane County	119	62
Clerk's certificate, Superior Court, County of Spokane	120	63
Clerk's certificate, Supreme Court of Washington	121	64
Proceedings in the Supreme Court of the State of Washington in Case No. 26088, State v. Eskridge (Excerpts from)	122	64
Motion for writ of mandate in Case No. 26088	122	64
Affidavit of Thomas Eskridge	123	65

	Original	Print
Proceedings in the Supreme Court of the State of Washington in Case No. 26088, State v. Eskridge (Excerpts from)—Continued		
Petition for writ of mandate	127	68
Affidavit of Thomas Eskridge	130	70
Motion docket entry denying petition for writ of mandate, April 24, 1936	132	72
Judgment	132a	72
Letter from Clerk, Supreme Court of Washington to Eskridge, dated January 14, 1947	133	73
Clerk's certificate, Supreme Court of Washington	134	74
Proceedings in the Supreme Court of the State of Washington in Case No. 26179, State v. Eskridge	135	75
Affidavit of service of motion to dismiss appeal	135	75
Notice of hearing motion to dismiss appeal	136	76
Motion to dismiss appeal	137	76
Affidavit of Ralph E. Foley	138	77
Letter from Clerk, Supreme Court of Washington to Ralph E. Foley, dated April 16, 1936	139	78
Motion docket entry granting motion to dismiss appeal	140	79
Judgment	141	79
Clerk's certificate, Supreme Court of Washington	142	80
Proceedings in the Supreme Court of the State of Washington in Case No. 32466, Application for writ of habeas corpus of Tom Eskridge v. Cranor	143	81
Motion for leave to proceed in forma pauperis and petition for writ of habeas corpus	143	81
Exhibits to petition for writ of habeas corpus filed in the Superior Court of the State of Washington in Case No. 11114, State v. Eskridge	149	88
Information	149	89
Judgment, Sentence and commitment upon verdict of guilty	150	89
Verdict of guilty	150a	90
Special verdict	151	91
Prosecutor's report, dated June 1, 1936	152	91
Clerk's certificate, Supreme Court of Washington	155	95
Clerk's certificate, Supreme Court of Washington, Case No. 33928	156	96
Order granting motion for leave to proceed in forma pauperis and granting petition for writ of certiorari	157	97

[fol. 1]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

33928

In the Matter of the Writ of Certiorari of

TOM ESKRIDGE, Petitioner,

v.

MERLE E. SCHNECKLOTH, Superintendent of the Washington State Penitentiary at Walla Walla, Washington, Respondent.

PRAECIPE—Filed December 9, 1957

To: Robert Holstein, Clerk of the Supreme Court of the State of Washington:

Please prepare and certify to the Clerk of the United States Supreme Court as the Record in Cause No. 33928 in the Supreme Court of the State of Washington entitled "In the Matter of the Application for a Writ of Habeas Corpus of Tom Eskridge, Petitioner, v. Merle E. Schneckloth, as Superintendent of the Washington State Penitentiary, Respondent" those documents and portions of the Records of the Supreme Court of the State of Washington which are designated and set forth in the attached Stipulation in the above action, which designations are herewith incorporated as though fully set forth.

Robert W. Graham, Attorney for Petitioner. John J. O'Connell, Attorney General, State of Washington; Michael R. Alfieri, Assistant Attorney General, State of Washington, Attorneys for Respondent.

[File endorsement omitted.]

[fol. 2] IN THE SUPREME COURT OF THE STATE OF WASHINGTON

33928

In the Matter of the Writ of Certiorari of

TOM ESKRIDGE, Petitioner,

v.

MERLE E. SCHNECKLOTH, Superintendent of the Washington State Penitentiary at Walla Walla, Washington, Respondent.

STIPULATION—Filed December 9, 1957

It is hereby Stipulated by and between the parties herein, through their undersigned attorneys of record, that the following documents and each of them shall be certified by the Clerk of the Supreme Court of the State of Washington as being and included in the Record before that court in Cause No. 33928, entitled "In the Matter of the Application for a Writ of Habeas Corpus of Tom Eskridge, Petitioner, vs. Merle E. Schneckloth, as Superintendent of the Washington State Penitentiary, Respondent":

(1) Motion for Leave to Proceed in Forma Pauperis, together with order endorsed thereon granting motion.
(2) Petition for a Writ of Habeas Corpus, together with Exhibits.
(The Exhibits to the Petition are included within the documents contained in Item (10) below.)
(3) Respondent's Return and Answer.
(4) Petitioner's Reply to Respondent's Return and Answer.
(5) Respondent's Memorandum.
(6) Order Denying Petition.
(7) Letter of Benjamin T. Hart to Petitioner, October 3, 1956.
(8) Motion for Rehearing En Banc.
(9) Order Denying Petition for Rehearing.

[fol. 3]

(10) Transcript consisting of 40 pages of those portions of the proceedings in Criminal Cause No. 11114 in the Superior Court of the State of Washington in and for Spokane County, being a part of the record in Cause No. 26088 in the Supreme Court of the State of Washington entitled "State of Washington ex rel. Thomas Eskridge, Relator, vs. Fred M. Witt, Judge of the Superior Court of the State of Washington in and for Spokane County, Respondent", which portions are designated in the Index attached to Respondent's Memorandum.

(11) The following additional portions of the record in Cause No. 26088:

(a) Motion for Writ of Mandate.

(b) Petition for Writ of Mandate.

(c) Affidavit of petitioner in support of Motion for Writ of Mandate dated Feb. 11, 1936.

(d) Affidavit of petitioner in support of Motion for Writ of Mandate dated April 13, 1936.

(e) Transcript of Endorsement on motion docket —"denied", of April 24, 1936.

(f) Transcript of Record in Journal 34 at page 161 for Wednesday, May 27, 1936 entitled "Judgment."

(12) The following portions of the record in Cause No. 26179 in the Supreme Court of the State of Washington entitled "State of Washington, Respondent vs. Tom Eskridge, Appellant":

(a) Motion to Dismiss Appeal and Supporting Affidavit of Ralph E. Foley.

(b) Notice.

(c) Affidavit of Service.

(d) Transcript of Entry on Motion Docket dismissing appeal.

(e) Transcript of Record in Volume 33 at page 154 of the Court Record Journal for Wednesday May 27, 1936 entitled "Judgment."

(13) The following enumerated documents incorporated by reference in Respondent's Return and Answer, which enumerated documents are a part of the records of the Supreme Court of the State of Washington in Cause No. 32466, entitled "In the Matter of the Application for a Writ of Habeas Corpus of Tom Eskridge":

[fol. 4]

(a) Information.

(b) Judgment and Sentence and Warrant of Commitment (To be printed as page *13* of Item 10 above).

(c) Special Verdict (To be printed as page 2 of Item 10 above).

(d) Prosecutor's Report.

(14) Motion for Leave to Proceed in Forma Pauperis and Petition for Writ of Habeas Corpus in Cause No. 32466.

It Is Further Stipulated that each of the documents above listed, together with all documents on file with the Clerk of this Court, including all exhibits attached to the Petition for Writ of Certiorari, shall be designated and printed as a part of the printed record of this proceeding, provided, however, that the Appendix to Respondent's Memorandum (Item No. 5 above) need not be reprinted, it being included within the transcript of proceedings identified as Item No. 10 above, and provided further that the exhibits to the Petition for Writ of Certiorari need not be reprinted where duplication is indicated below:

Ex. 1—To be printed as Item No. 6 above.

Ex. 2—To be printed as Item No. 1 and 2 above.

Ex. 3—To be printed as Item No. 8 above.

Ex. 4— Print.

Ex. 5—To be printed as page 22 of Item No. 10 above.

Ex. 6—To be printed as page 39 of Item No. 10 above.

Ex. 7—(Information.) To be printed as Item 13 (a) above.

Ex. 7a—(Judgment Sentence and Commitment.) To be printed as Page 13 of Item No. 10 above.

Ex. 8, 8a and 8b—Print.
Ex. 9—Print.
Ex. 10—To be omitted.

Robert W. Graham, Attorney for Petitioner. John J. O'Connell, Attorney General, State of Washington, Michael A. Alfieri, Assistant Attorney General, State of Washington, Attorneys for Respondent.

[File endorsement omitted.]

[fol. 5] IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 33928

In the Matter of the Application for a Writ of Habeas Corpus of

TOM ESKRIDGE, Petitioner,

vs.

MERLE R. SCHNECKLOTH, Superintendent of the Washington State Penitentiary at Walla Walla, Washington, Respondent.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS, AFFIDAVIT IN SUPPORT, AND ORDER GRANTING SAME—July 25, 1956.

To: The Honorable Chief Justice Frederick G. Hamley of the above entitled Court

Comes now Tom Eskridge, the above named Petitioner, based upon his Affidavit, moves the Court for an Order granting leave to proceed in Forma Pauperis.

Respectfully requested, Tom Eskridge, Petitioner pro se.

STATE OF WASHINGTON
County of Walla Walla, ss:

Tom Eskridge, first being duly sworn deposes and says: That he is the above named petitioner; that he is a Citizen of the United States of America; and a person without property, personal, real or otherwise, and without Money

to pay the costs of the action he seeks but verily believes himself entitled to the redress sought. That because of such poverty he must pray the Court grant him leave to proceed in Forma Pauperis.

Wherefore, Petitioner prays his prayer be granted and an Order issued by the Honorable Chief Justice, Ordering the proceedings to be in Forma Pauperis.

Tom Eskridge, Petitioner pro se.

Subscribed and Sworn to before me this 29th day of June, 1956.

F. J. Fink, Notary Public in and for the State of Washington, residing in Walla Walla County.

Request to proceed in Forma Pauperis Is Granted, July 25, 1956.
Charles T. Donworth, Chief Justice.

[File endorsement omitted.]

[fol. 6] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 33928

In the Matter of the Application for a Writ of Habeas Corpus of

TOM ESKRIDGE, Petitioner,

vs.

MERLE R. SCHNECKLOTH, as Superintendent of the Washington State Penitentiary at Walla Walla, Washington, Respondent.

PETITION FOR A WRIT OF HABEAS CORPUS—Filed July 25, 1956.

To The Honorable Chief Justice Frederick R. Hamley of the above entitled court.

Your petitioner, Tom Eskridge, hereby applies to this Court for a Writ of habeas corpus. He calls attention here-

with to the judgment recently announced by the Supreme Court of the United States in the case of Griffin and Crenshaw v. The People of the State of Illinois—No. 95—October Term, 1955, which was a ruling on state appeals in forma pauperis, and he submits this petition as an original application under the provisions of the Constitution of the State of Washington and the Laws enacted thereto.

In support of this application and petition Your Petitioner respectfully alleges and states as follows:

I

That by birth he is a citizen of the United States of America, and of the State of Washington wherein he resides, and as such, is entitled to all benefits and immunities of due process of law and to the equal protection of the laws as guaranteed him by the Constitutions of the State of Washington and of the United States.

II

That he is restrained of his liberty by unlawful imprisonment in the Washington State Penitentiary at Walla Walla, and that the person by whom he is so imprisoned and restrained is the Superintendent thereof, Merle R. Schneckloth.

III

That petitioner was confined in said penitentiary on the [fol. 7] 16th day of December, 1935, on a judgment, sentence, and commitment which issued from the Superior Court of Spokane County on the 14th day of December, 1935, on a verdict of guilty of first degree murder. (Exhibits page 1.)

IV

That the illegality of petitioner's detention is based upon the following facts:

He was denied the right to appeal as afforded others under the Constitution of the State of Washington. (Exhibit #2)

V

That this said right of appeal is guaranteed the accused in criminal prosecutions in all cases by the 10th Amendment

supplement to Article 1, Sec. 22, of the Constitution of the State of Washington.

VI

That the party responsible for denying petitioner the right to appeal was the Honorable Judge Fred H. Witt, presiding in the case of The State of Washington vs. Tom Eskridge, Cause No. 11114, Spokane County.

VII

That the trial Court's action in denying petitioner's application for the transcript of the trial at the expense of Spokane County, which was supported by an affidavit of poverty and allegations of errors which occurred during the trial, was based on the Court's individual opinion that petitioner had had a fair and impartial trial and that justice would not be promoted by supplying petitioner with a transcript at the expense of Spokane County, and the said Court signed an order to that effect on the 20th day of January, 1936. (Exhibit #2)

VIII

That the trial Court issued the above mentioned order under the authority of a Washington statute (RCW 2.32.240) purporting to provide free transcripts for indigent defendants, which states:

> " * * * *Provided,* That when the defendant in any criminal case presents to the judge presiding satisfactory proof by affidavit or otherwise that he is unable to pay for such transcript, the judge presiding, if in his opinion justice will thereby be promoted, may order said transcript to be made by the official reporter, which transcript fee therefor shall be paid out of the [fol. 8]county treasury as other expenses of the court are paid."

IX

That in March, 1936, petitioner filed in the state supreme court a petition for a writ of mandate with several motions and affidavits in support thereof, under Cause No. 26083, Wash. Ex Rel Thomas Eskridge vs. Fred H. Witt, Judge, Superior Court, Spokane County, seeking an order re-

quiring the lower court to provide petitioner with a free transcript. This action was denied by the supreme court but petitioner wasn't notified officially until the 20 of January, 1947, owing, possibly, to an error in a belief that petitioner was still represented by counsel, which he was not. (Exhibits Nos. 3, 4, 5, 6, 7, 8, 9, 10.)

X

Petitioner believes that the law (RCW 2.32.240) granting certain indigent defendants access to the trial transcript, is unconstitutional in that it permits the trial judge to substitute himself for the supreme court in the matter of appellate relief for destitute defendants which is a direct denial of due process of law as guaranteed the accused in criminal prosecutions in this state, Article 1, Section 3; and a violation of the equal protection clause of the 14th Amendment of the Constitution of the United States.

The 10th Amendment, supplementing Section 22 of Article 1 of Washington's constitution, states plainly and precisely that the accused in criminal prosecutions shall have the right to *counsel;* to a *copy of the accusation;* to *meet witnesses against him face to face;* to *compel the attendance of witnesses;* to a speedy *public trial* by an impartial *jury;* and the right to *appeal in all cases.* (Petitioner's underscore).

All the rights emphasized in the preceeding paragraph are extremely important to the accused in any criminal proceeding and it would seem that if the writers of the constitution meant that one of them was to be made available to the accused before final judgment, all of them were to be, because all of them are contained in one constitutional provision which ends with the sentence:

> " * * * In no instance shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed." (L. 1921, p. 79, Sec. 1.) Approved November, 1922.

Petitioner is not trained in legal proceedings or in the language of the law. Nevertheless, the term "final judgment" must have meant, in the minds of the writers of Article 1, Section 22, the last decision in every criminal [fol. 9] action, especially the judgment of a trial if there

is no constitutional provision for appeal. But if appeal is available to the defendant and he files notice thereof, it follows that final judgment on the appeal action must occur when the higher court either affirms, reverses, or dismisses the appeal. Inasmuch as the notice of appeal starts an entirely new action, under a different cause number and in a different court, it is extremely difficult for petitioner to reconcile himself to the premise that the term "final judgment" in law means only one thing—the trial judgment. If a trial judgment is reversed on appeal its finality is certainly of limited duration. Many a person once condemned to death by a trial judgment is walking the streets today.

XI

If it holds that "final judgment" means the trial court's judgment in so far as the State of Washington's constitutional provisions for appellate review is concerned in cases where the accused is poor and destitute, petitioner then attacks the statute that purportedly provides impecunious defendants with a free trial transcript for the purpose of appeal, and alleges that it is a vicious, monstrous barrier erected under false colors for the purpose of denying certain poor persons among the accused the material right of appellate review. As set forth above petitioner showed that he was denied due process of law and the equal protection of the laws by the said Fred H. Witt, judge of the Superior Court for Spokane County.

On or about the 10th day of August, 1935, a matter of only three months prior to his trial for first degree murder, petitioner appeared in court before Judge Witt for judgment on a plea of guilty to the charge of grand larceny, which involved the theft of two typewriters from the Spangle school house in Spokane County. At the time petitioner was on parole from San Quentin Penitentiary in the state of California. The court showed extreme passion and prejudice toward petitioner in pronouncing judgment for the typewriter theft, he said:

> "I'm tired of you exconvicts coming up here from California and breaking into business establishments and stealing money and property. It is going to stop! I hereby sentence you to 15 years in the state peniten-

tiary at Walla Walla, and I recommend that you serve the full 15 years. Yes, if I have my way about it you will serve every day of the 15 years!"

Thus when petitioner three months later appeared again before this same judge for trial on a charge of first degree [fol. 10] murder, and the judge found it necessary in his instructions to the jury to repeat the several unproved aliases charged to petitioner in the Information, petitioner concluded that the Court put him at a disadvantage by suggesting to the jury that petitioner had a past criminal record, therefore, highly improbable that the same Court had a free and unbiased mind when he was considering petitioner's application for the trial transcript.

XII

In the Griffin and Crenshaw case mentioned above, Mr. Justice Black said:

(p. 6, para. 2) "All of the States now provide some method of appeal from criminal convictions, recognizing the importance of appellate review to a correct adjudication of guilt or innocence. Statistics show that a substantial proportion of criminal convictions are reversed by state appellate courts. Thus to deny adequate review to the poor means that many of them may lose their life, liberty or property because of unjust convictions which appellate courts would set aside. Many States have recognized this and provided aid for convicted defendants who have a right to appeal and need a transcript but are unable to pay for it. A few have not. Such a denial is a misfit in a country dedicated to affording equal justice to all and special privileges to none in the administration of its criminal law." *There can be no equal justice where the kind of trial a man gets depends on the amount of money he has. Destitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy transcripts.* (Petitioner's underscore)

"(The Criminal Court of Appeals in Oklahoma in 1913 spoke in the tradition of this country's dedication to due process and equal protection when it

declared that the law is no respecter of persons and said:

> "We want the people of Oklahoma to understand, one and all, that the poorest and most unpopular person in the state . . . can depend upon it that justice is not for sale in Oklahoma, and that no one can be deprived of his right of appeal simply because he is unable to pay a stenographer to extend the notes of the testimony." Jeffries v. State, 9 Okla. Cr. 573, 576, 132, p. 823, 824.)

But the case at bar presents a little different situation. Your petitioner was not only denied appellate review on account of being a poor person but he was also denied this right, and privilege because in one man's opinion justice would not be promoted by permitting this particular petitioner the necessary transcript. On the same page but in the first paragraph of this Griffin and Crenshaw case Justice said:

> "There is no meaningful distinction between a rule which would deny the poor the right to defend themselves in a trial court and one which effectively denies the poor an adequate appellate review accorded to all who have money enough to pay the costs in advance."

In a separate opinion but concurring with the judgment in the same case Mr. Justice Frankfurter said: (page 2 para. 1)

> "Surely it would not need argument to conclude that [fol. 11] a State could not, within its wide scope of discretion in these matters, allow an appeal for persons convicted of crimes punishable by imprisonment of a year or more, only on payment of a fee of $500. Illinois, of course, has done nothing so crude as that. But Illinois has said, in effect, that the Supreme Court of Illinois can consider alleged errors occurring in a criminal trial only if the basis for determining whether there were errors is brought before it by a bill of exceptions and not otherwise. . .
>
> "This Court would have to be wilfully blind not to know that there have in the past been prejudicial trial errors which called for reversal of convictions of in-

digent defendants, and that the number of those who have not had the means for paying for the cost of a bill of exceptions is not so negligible as to invoke what ever truth there may be in the maxim *deminimis*."

Near the bottom of page 6 of this opinion Justice Frankfurter said in conclusion:

"We should not indulge in the fiction that the law now announced has always been the law and, therefore, that those who did not avail themselves of it waived their rights. It is much more conducive to law's self respect to recognize candidly the considerations that give prospective content to a new pronouncement of law. That is a consonant with the spirit of our law and justified by those considerations of reason which should dominate the law, has been luminously expounded by Mr. Justice Cardozo, shortly before he came here and in an opinion which he wrote for the Court."

Earlier in the Court's opinion Justice Black, on page 6, para. 2, said:

"Surely no one would contend that either a State or the Federal Government could constitutionally provide that defendants unable to pay court costs in advance should be denied the right to plead not guilty or to defend themselves in court. Such a law would make the constitutional promise of a fair trial a worthless thing. Notice, the right to be heard, and the right to counsel would under such circumstances be meaningless promises to the poor. In criminal trials a State can be no more discriminate on account of poverty than on account of religion, race or color. Plainly the ability to pay costs in advance bears no rational relationship to a defendant's guilt or innocence and could not be used as an excuse to deprive a defendant of a fair trial." *See discussion in *Hovey* v. *Elliot*, 167 U. S. 400.

Petitioner firmly believes that the excerpts above, taken from the judgment announced in the Griffin and Crenshaw case by the Supreme Court of the United States on the

23rd day of April, 1956, fully support his contention that the discretionary denial of his application for the transcript of his first degree murder trial 21 years ago, prevented him from having his legal day in court. That said denial prohibited him from showing Your Honorable Court the following complaints:

1. The Superior Court's denial of an extension of time necessary to prepare an adequate defense.

2. The Information was faulty, it was duplicious in contruction and intent.

3. Illegal evidence and perjured testimony.

[fol. 12] 4. A denial of counsel at vital points in the proceedings against petitioner.

5. The Court's prejudicial instructions to the jury.

All of which, had they been duly rectified, would have permitted petitioner to have a fair and impartial trial, an inherent right sought by everybody and guaranteed every citizen of the State of Washington and of the United States by the State and Federal constitutions. These allegations are supported by a number of exhibits which are attached hereto and mad a part thereof as fully as if set out in haec verba.

XIII

A writ of habeas corpus is the only way petitioner has at this time to secure his rights. Wherefore, he prays that the Honorable Chief Justice will issue a writ of habeas corpus, out of and under the seal of this Court, directed to Merle R. Schneckloth, as Superintendent of the Washington State Penitentiary at Walla Walla, Washington, requiring him to produce the body of petitioner, Tom Eskridge, at the time and place to be fixed in the said writ, to the end that the said Tom Eskridge may be dealt with according to the law in such case made and provided. Petitioner further prays that the Court will issue an order requiring said Merle R. Schneckloth to show cause why the said writ of habeas corpus should not be allowed.

All of which is respectfully submitted by

Tom Eskridge, petitioner in pro se.

Duly sworn to by Tom Eskridge. Jurat omitted in printing.

[fol. 13] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 33928

In the matter of the Application for a Writ of Habeas Corpus of

TOM ESKRIDGE, Petitioner,

vs.

MERLE R. SCHNECKLOTH, Superintendent of the Washington State Penitentiary at Walla Walla, Washington, Respondent.

RETURN AND ANSWER—Filed August 25, 1956

Comes now Merle R. Schneckloth, Superintendent of Washington State Penitentiary at Walla Walla, Washington, by and through his attorneys, Don Eastvold, Attorney General, and Michael R. Alfieri, Assistant Attorney General, and for return and answer to the petition for writ of habeas corpus in the above entitled court, alleges, admits and denies as follows:

I.

Respondent denies each and every allegation made and thing contained in the petition of Tom Eskridge for a writ of habeas corpus, except such portions thereof as may be herein admitted by respondent's affirmative answer and return.

Further answering and by way of affirmative answer and return, respondent alleges:

I

That on the 17th day of October, 1935, information was filed in Superior Court of the State of Washington for [fol. 14] Spokane County, charging this petitioner with the crime of murder in the first degree.

II

That on the 14th day of December, 1935, pursuant to the finding by jury of guilty of murder in the first degree, judgment and sentence was entered against the petitioner

and a special verdict by the jury that the death penalty would not be inflicted, whereupon the court sentenced this petitioner to imprisonment at the Washington State Penitentiary for his natural life.

III

That pursuant to the judgment and sentence warrant of commitment was issued on the 14th day of December, 1935, directing the petitioner then be delivered to the warden of the State Penitentiary for confinement.

IV

That by reference to the file Supreme Court Cause No. 32466 to the return and answer therein. Following enmumerated documents attached to the return and answer therein which are the certified copies of the original information, special verdict, judgment and sentence, warrant of commitment and prosecutors' report are by reference made a part hereof same as though fully set out.

V

The petitioner is legally held pursuant to said judgment and sentence and warrant of commitment, that his sentence [fol. 15] has not expired, he has not been granted a pardon nor is he entitled to parole.

VI

That the court had jurisdiction over the person of the petitioner and the authority to enter a sentence, the judgment and sentence is not void on its face and the petitioner has stated no grounds for the granting of the writ of habeas corpus.

Wherefore, having fully answered petitioner's application for a writ of habeas corpus, respondent prays that the petition for a writ of habeas corpus be dismissed and respondent be discharged from further answer herein.

Don Eastvold, Attorney General, Michael R. Alfieri, Assistant Attorney General.

Duly sworn to by Michael R. Alfieri. Jurat omitted in printing.

[fol. 16] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 33928

In the Matter of the Application for a Writ of Habeas Corpus of

TOM ESKRIDGE, Petitioner,

vs.

MERLE R. SCHNECKLOTH, as Superintendent of the Washington State Penitentiary at Walla Walla, Washington, Respondent.

PETITIONER'S REPLY TO RESPONDENT'S RETURN AND ANSWER —Filed September 14, 1956

Comes now Tom Eskridge, petitioner, and in reply to Respondent's return and answer filed in the above entitled case, points out that respondant has made no answer whatever to the pertinent allegations made and presented by petitioner in the above cause, other than to allude to certain certified copies of documents in the return and answer to an old Supreme Court Cause, No. 32466, in which petitioner sought relief, unsuccessfully, from illegal and unconstitutional imprisonment. He totally ignores the fact that petitioner is complaining of being denied his constitutional right of appeal.

Petitioner reminds the Court that his petition for a writ of habeas corpus in the above entitled case raises one question and one question only, namely: Was he denied the due process of law and the equal protection of the laws as guaranteed by Article I, section 22, supplemented by the 10th Amendment, of the Constitution of the State of Washington, and Section 1 of the 14th Amendment to the Constitution of the United States, respectively, and by a recent ruling of the United States Supreme Court in the Griffin and Crenshaw vs. The People of the State of Illinois case, when he was discriminately denied his constitutional right to appeal in a state which grants appellate review?

To the best of petitioner's knowledge, this question, in the light of the federal decision in the Griffin and Crenshaw

case, has never been decided in the State of Washington. It seems quite apparent that respondent's attorney doesn't [fol. 17] want it settled now, considering the extraneous, irrelevant and immaterial matter brought up in his return and answer obviously as a smoke screen to cloud the facts and evade the issue, as well as to divert the Honorable Court's attention from the one inextinguishable question—was the petitioner denied his constitutional right to appeal by the trial court's arbitrary and biased action in witholding the trial transcript?

If petitioner had been given access to the trial transcript immediately following his timely oral notice of appeal, he certainly would have shown this Honorable Court that not one bit of evidence was produced, or testimony developed throughout the course of the nine days of trial, to warrant either premeditated murder or murder while attempting or intending a robbery. However, the trial transcript will show that petitioner's counsel timely objected to perjured testimony designed to mislead and misinform the court and the jury, and objected to a checkered cap, two sizes too small for petitioner's head, and to a brown coat-sweater which had dark red stains on it which were not blood stains, but the prosecution, over defense counsel's objections, was permitted to wave it in front of the jury in support of allegations that the sweater belonged to petitioner and that the dark red stains on it were blood from the alleged victim of the alleged murder. Petitioner discovered that the dark red stains on the said sweater were semi-liquid lipstick that had been squeezed from a large tube of lipstick that had been wrapped in the sweater at some time or other, and that the prosecution well knew from the beginning of the trial that the dark red stains on the sweater, admitted in evidence over counsel's objection, were not blood stains. The trial transcript will show beyond all doubt that the state's star witness gave perjured and misleading testimony when he testified that petitioner was at the scene of the alleged crime. Also, the transcript will show prejudice on the part of the trial court against petitioner when, upon reading the instructions to the jury, he repeated the peti- [fol. 18] tioner's unproved aliases several times to show that petitioner had a past criminal record, and emphasized the two different forms of First Degree Murder—"premedi-

tated design to effect the death'' and ''and while engaged in the attempt to commit the crime of robbery'' which was nothing less than the court's shotgun method of making certain that the defendant would be convicted of First Degree Murder in one way or the other.

Nevertheless, petitioner, without admitting the presence or the validity of the documents alluded to in paragraph four of respondent's return and answer, will attempt to controvert them as they are titled and enumerated therein.

1. *Original Information.* The said information respondent relies upon for assistance in repulsing petitioner's argument in this case, is an illegal, equivocal instrument designed and constructed to compel the accused to be a witness against himself in that a multitude of unproved aliases were repeated therein constantly for the invidious purpose of inflaming and prejudicing the jury as to the accused's character and social status; that the charging part of said information was designed purposely to read so that two forms of First Degree Murder could be considered in the event that some members of the jury were unable to decide the true motive for the alleged murder, i.e. ''premeditated design to effect the death'' and ''while engaged in the attempt to commit the crime of robbery,'' to which accused's counsel duly objected on the ground that the dualistically charged crime would require two defenses which counsel declared he didn't have time to prepare, owing to the fact that the information was filed on the 17th day of October, 1935, and the case set for trial for the 4th day of November, 1935, a matter of only 17 days, even though accused's counsel's motion for additional time to prepare an adequate defense to the dual charges of First Degree Murder was denied by the presiding judge. Petitioner further alleges illegality of the information in that it was not indorsed thereon with the names of the witnesses to appear for the state, some 40 or more whose names and addresses were not given to the defense as required by law, inasmuch as petitioner was denied a preliminary hearing.

[fol. 19] 2. *Special Verdict.* The special verdict referred to by respondent to support his position in this matter is null and void because it was accepted by the trial court in the absence of petitioner's counsel, thereby depriving petitioner of his legal right and privilege of determining

whether or not the said special verdict was the true will of the jury.

3. *Judgment and Sentence.* Petitioner demurs against the document respondent refers to as the "judgment and sentence" which he offers in evidence to support the return and answer to petitioner's application for a writ of habeas corpus. Petitioner contends that respondent does not possess now, nor did he ever possess a true and certified copy of the original judgment and sentence in petitioner's murder conviction now before this court on habeas corpus. Petitioner bases his contention on two letters attached hereto, which he offers in evidence here as "Exhibit 1" and "Exhibit 2" in support of petitioner's reply to respondent's return and answer.

4. *Warrant of Commitment.* Respondent did not furnish petitioner with any copies of any of these documents, and petitioner does not have in his files any such document as a "Warrant of Commitment" as respondent refers to in paragraph four of his return and answer. Therefore, petitioner does not admit that such a document exists, and objects to the use of any purported document titled "Warrant of Commitment" in this action.

5. *Prosecutor's Report.* Petitioner demurs against this three-page instrument as being of immaterial, irrelevant and unsubstantiated substance wilfully and maliciously falsified, and designed to incite, inflame and prejudice state officials against petitioner some 21 years ago. Petitioner truthfully alleges that this said document was created at the connivance of the prosecuting attorney's office for the purpose of prejudicing prison and parole authorities against petitioner as a means of delaying, if not preventing altogether, petitioner's eventual release from prison and thereby preventing him from exposing the criminal [fol. 20] means and maneuvers the prosecution employed in bringing about petitioner's conviction on a purported charge of First Degree Murder, to-wit:

1. Conspiring with a police matron of the Spokane Police department for the purpose of identifying petitioner with possession of an allegedly stolen automobile.

2. Conspiring with a clerk in a Spokane hardware store for the purpose of identifying petitioner with

the purchase of paint allegedly used in changing the color of said automobile.

3. Inducing a young high school girl to give perjured testimony in regards to identification of an automobile allegedly used in the said crime of murder.

4. Conspiring with the so-called star witness for the state to give false testimony regarding identification of petitioner at the alleged scene of the crime.

5. Conspiring with the Sheriff's office of Spokane County for the purpose of having petitioner removed from the county jail to the state penitentiary, a distance of some 150 miles, immediately following the signing of the judgment and sentence, and thereby causing an end to the negotiations between petitioner and an attorney who was considering perfecting an appeal for petitioner to the Supreme Court.

Had petitioner been allowed to appeal he would have verified to the Supreme Court the first four allegations hereabove, from the trial transcript, and would have substantiated the fifth with an affidavit of one of the Spokane County jailors.

Petitioner particularly objects to page one of the said Prosecutor's Report (the June 1st letter from the deputy prosecutor to the state parole officer, written in 1936) on the ground that the deputy prosecutor alleges that petitioner's personality makes him "a dangerous man at any and all times. His whole makeup is surly and he is antagonistic toward all tenets of society." The reason for petitioner's objection is based upon the inaccuracy of the deputy prosecutor's analysis of petitioner's character and personality, because the deputy prosecutor was not a psychiatrist, and because the only opportunity he had to form such an opinion was when petitioner, prior to the filing of the information for First Degree Murder, was being interviewed by several burly and surly detectives late one night in the Spokane City jail, in an effort to obtain a confession from petitioner to First Degree Murder.

[fol. 21] On page two of the Prosecutor's Report, the deputy prosecutor accuses petitioner of having gone to Everett, Washington, and of stealing an automobile and typewriter there, and then proceeding to Spokane where

he was alleged to have killed a druggist while attempting a robbery. The trial transcript will show *not* one bit of evidence or testimony that petitioner was ever in the City of Everett, Washington, or that he stole an automobile or a typewriter there, nor will it show one bit of evidence or testimony that petitioner killed a druggist or drug store clerk in Spokane, or that he intended or attempted a crime of robbery there.

On page three of this same prosecutor's report, the deputy prosecutor, under "Prior Record", alleges that in August, 1935, "The defendant, on his plea of guilty, was convicted of robbery with the use of firearms, Spokane County"; . . . "On August 29, 1931, defendant was convicted in Ventura, Calif., of the crime of burglary in second degree, and his term was fixed at 7 yrs. and 5 yrs., such sentences to run concurrently."

Actually, the facts in the prior record above are:

1. At no time has petitioner been convicted, or pleaded guilty to, the crime of robbery with firearms or otherwise in Spokane or Spokane County or the State of Washington.

2. On or about August 29, 1931, petitioner was convicted by a jury in Ventura County of burglary in the first degree but sentenced by the Court on second degree, with the parole board setting his time at 7 years and 5 years on each of two counts with the sentences to run consecutively, not concurrently.

Therefore, all and the whole thereof of the respondent's argument in his answer to petitioner's application for a writ of habeas corpus, is directed solely and alone to the proposition that on the face of the Original Information, Special Verdict, Judgment and Sentence, Warrant of Commitment and the Prosecutor's Report, petitioner's imprisonment is valid and brought about through the due process of law and by the equal protection of the laws as guaranteed by the State and Federal Constitutions.

[fol. 22] However, as a matter of fact, respondent has elected to ignore the gravamen of this case at bar, and that is the fact that petitioner was denied, by the trial court, his constitutional right to appeal his first degree murder conviction by the withholding of the trial transcript, without which an appeal to a higher tribunal was impossible, and, as set forth hereinbefore, said denial, in

light of the recent United States Supreme Court decision in the Griffin and Crenshaw case, was a flagrant disregard of petitioner's guaranteed rights, privileges, immunities, and equal protection of the laws as contemplated in both the Federal and Washington State Constitutions.

Wherefore, having fully replied to respondent's return and answer to the above entitled Cause, petitioner prays that the Honorable Court grants his prayer for relief from the unjust confinement as set forth in his petition for a writ of habeas corpus.

Respectfully submitted, Tom Eskridge, Petitioner pro se.

Duly sworn to by Tom Eskridge. Jurat omitted in printing.

[fol. 22a] EXHIBIT NO. 1 TO PETITIONER'S REPLY

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR THE COUNTY OF SPOKANE

Department No. 6

Ralph P. Edgerton, Judge.

Spokane 11,
December 19, 1952.

Mr. Tom Eskridge,
Post Office Box 520,
Walla Walla, Washington.

Re: State v. Eskridge, No. 11114

DEAR MR. ESKRIDGE:

I enclose herewith copies of the Information, Verdict, Special Verdict, and Judgment in the above case. *Incidentally, the original judgment does not appear to be in the file, but only a copy of the same. The enclosed copy is a copy of the one in the file.* (Petitioner's underscore.)

It will be sometime before any member of the Parole Board is over this way again, but when one is, I shall

try to take occasion to speak to him about your problem. However, I would suggest that Section (.92.080, RCW, probably provides the answer and governs on the question of when your sentence for murder began.

Very truly yours, (S.) Ralph P. Edgerton.

[fol. 23] EXHIBIT No. 2 TO PETITIONER'S REPLY

Re: STATE OF WASHINGTON vs. TOM ESKRIDGE

No. 11114

SPOKANE COUNTY

Office of County Clerk, and Ex-Officio of the Superior Court

Spokane 1, Washington,
December 29, 1952.

Mr. Tom Eskridge, 19590,
P. O. Box 520,
Walla Walla, Washington.

DEAR SIR:

We have your letter of December 22, enclosing American Express Company money order in the amount of $1.00, for a photostatic copy of the original Judgment, Sentence and Commitment in the above cause.

Upon examination of the file we find that the Judgment Sentence and Commitment is not the original, but a copy of the original. This is the same paper, which was sent to you on a previous order.

Should you still want a photostatic copy of this instrument kindly let us know. If not, we will return to you the $1.00 money order.

Yours very truly, Geo. E. Fallquist, County Clerk,
by (S.) D. J. Sutherland, Deputy.

DJS: lm

[fol. 24] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 33928

In the Matter of the Application for a Writ of Habeas Corpus of

TOM ESKRIDGE, Petitioner,

vs.

MERLE R. SCHNECKLOTH, as Superintendent of the Washington State Penitentiary at Walla Walla, Washington, Respondent.

RESPONDENT'S MEMORANDUM—Filed September 20 1956

This petitioner is applying for a writ of habeas corpus on the grounds that his constitutional rights to due process of law, and equal protection were violated, because as an indigent he was denied the right to appeal. Or as he states on page 4 of his petition, "The material right of appellate review." This being brought about by the trial court's denial to furnish him with a statement of facts at state expense.

The basis of his argument is the recent decision handed down by the United States Supreme Court in *Griffin and Grenshaw* v. *Illinois*, No. 95, Oct. Term 1955, page 777.

An outline of the factors (both law and fact) involved in the Griffin case show the following:

1. The Illinois constitution does not provide for any right to an appeal.

2. An appeal can be made in Illinois by writ of error, by providing the appellate court with a bill of exceptions, or certified statement of facts of the trial proceedings.

3. Another type of appeal can be made under Post Conviction Hearing Act, wherein only constitutional questions [fol. 25] can be considered. Under this act a free transcript may be obtained to review constitutional questions only.

4. A free transcript is provided for appellate review if a death sentence is involved.

5. In all other appeals the statement of facts (called transcript in the case) must be furnished by the appealing party.

6. "The court assumed as a basis for arriving at their decision that errors were committed in the trial which would merit reversal.

The factors involved in the present application are:

1. Our state provides for a constitutional right to appeal.

2. Regardless of whether it is a capital case or not a statement of facts is available to an indigent at county expense, if in opinion of the trial judge, justice will be promoted.

3. As a basic for decision in this case we cannot assume that trial errors were committed because as stated in *State ex rel Marx v. Superior Court*, 163 Sec. 459 at page 465, "We have authority of our own in favor of the fairness of the trial and regularity of trial judge's procedure.

4. The attached transcript of which was supplied in this petitioner's attempt to mandamus the trial court to furnish a free statement of facts in our Supreme Court cause number 26088, further show:

(a) This petitioner was represented by the father and son team of Donovan and Donovan throughout his trial, up to and including the argument for a new trial and motion to arrest judgment.

(b) Petitioner applied for a free statement of facts on seven grounds which are set out in pages 14 and 15 of the attached transcript and an additional affidavit which appears at pages 27, 28, 29, 30. (They are substantially the same as some of the grounds enumerated in the present application).

[fol. 26] (c) Affidavits were supplied by the state and by one of the Donovans who represented this petitioner. A. J. Donovans' affidavit is in the attached transcript at pages 35, 36 and 37.

(d) The matter was heard on the submitted affidavits and an order entered denying the application for a free statement of facts. This order appears at page 39 of the attached transcript.

It is obvious at the beginning of argument that there are differences of factors, both in law and in fact between the present application and the *Griffin* case. In the final analy-

sis, however, regardless or in spite of these differences, the ultimate two questions that must be answered in this petition are:

1. Whether or not the effects of the *Griffin* case are retrospective if they apply to this case.

2. Whether or not this petitioners' constitutional rights of due process and equal protection were *vidated*.

It appears to the respondent that there is an apparent inconsistency in the *Griffin* case on the question of retrospective effect. The majority of the majority is silent on this point, although one of the dissenting opinions state that:

> "Mr. Justice Black's opinion is not limited to the future. It holds that a past as well as a future conviction of crime in a state court is invalid where the State has failed to furnish a free transcript to an indigent defendant who has sought, as petitioner did here, to obtain a review of a ruling that was dependent upon the evidence in his case."

The concurring opinion in effect, however, states at page 790 that, "For sound reasons; law generally speaks prospectively . . . . . It is much more condusive to recognize candidly the consideration that give prospective content to a new pro*m*ouncement of law."

In the Illinois case they were not dealing with a statute that was ruled unconstitutional but with a proce*e*dure of appellate practice that was lacking, and therefore discriminatory.

[fol. 27] The court in effect said that since adequate provision had not been provided by the State of Illinois to afford an indigent in less than a capital case an opportunity for a free statement of facts, equal protection had been violated.

The retrospective effect of the *Griffin* case can only be an issue in cases arising in Illinois or in States which have a similar appellate proce*e*dure. We can have no problem with the retrospective effect of the *Griffin* case until our own appellate proce*e*dure is ruled upon.

It has already been pointed out that our constitution provides everyone with the *right* of appeal. Our legislature has seen fit to impliment this right with the provision that even

a poor person regardless of whether it is a capital case or not, can obtain a free statement of facts if he can show the trial judge that justice will be promoted. Our system has not summarily denied the right to appeal to anyone solely because he is indigent. This was the sole basis of discrimination in the *Griffin* case, because in Illinois a capital offender could obtain a free statement of facts whereas the lesser offenders could not, except in the limited instances to review constitutional issues only.

Our legislature has provided the trial judge the discretioning balance to protect society against frivilous practices at its expense.

Was this discretionary balance abused in this case; when the trial court refused this petitioners request.

Let us look first to this petitioners grounds for a motion for new trial and arrest of judgment, found at pages 3 and 8 respectively of the attached transcript.

The petitioner alleges, (1) that he had new evidence, (2) accident and surprise, (3) errors of law occurring at the trial, (4) Misconduct of jury, (5) improper receipt of evidence by the jury, (6) the verdict was contrary to law and evidence, (7) facts stated in the information did not con- [fol. 28] stitute a crime, (8) evidence that was duplicious (10) there was a material varience between the allegation and proof. Both motions were argued by competent counsel and eventually denied by the court.

Then in his petition for a statement of facts, this petitioner alleged that he had had insufficient time to prepare a defense. He misinformed the court by stating that an attorney had been appointed for him on October 17, and he was placed on trial November 4, whereas the record shows that he had consulted with his attorney as early as September 25. Again he alleges that the information was duplicious. He alleged that he had a witness who could prove that one of the state's witnesses committed perjury. He alleged that his attorney admitted a fact of possession during the trial proceedings, alleged that his attorney failed to call certain witnesses to establish an alibi for him. He further states that he had new evidence and further witnesses to prove his innocence and that the jury disregarded many instructions.

In an additional affidavit he again alleged that the jury disregarded the evidence and laws as given by the court.

Again he alleged that his defense attorneys were not allowed sufficient time to prepare a defense or to get necessary witnesses. Again he stated that he had new evidence to prove his innocence and to prove perjury committed by certain state witnesses.

In addition an affidavit of one of the defense attorneys was supplied the court. Whether or not it was a violation of the attorney-client relationship and improper for the court to consider, it never-the-less showed that every effort was made to afford this person with adequate representation. It ended with the statement that they believed that Mr. Eskridge had received a fair trial.

In view of the foregoing facts and considerations, can it be said that equal protection was not given to both the state and this petitioner. Must it be concluded that even after [fol. 29] the trial court has twice given consideration to these allegations that a fair trial was not received especially in view of the fact that none of the allegations which could affect the merits of the case were in any way substantiated, or else were refuted by the petitioners own counsel. In spite of all this however, if this court must follow the *Griffin* case, appellate review should have been invoked because this person could not afford his own frivilous appeal.

Does the constitutional right to appeal necessarily mean that the legislature cannot fix conditions for appellate proceedure. As long as it is not discriminatory, it obviously can.

Does the right to appeal mean that the legislative power to give a trial general discretionary power, to the end that justice will be promoted, is restricted solely to the question of whether the appellant is poor or not. It is apparent from a reading of RCW 2.32.240 that no indigent appellant is prevented from making a bona fide appeal. No discretion of the judge can properly be used to prevent an appeal solely on the grounds of poverty. The only discretion that he can actually exercise is on the issue of whether justice will or will not be promoted. Or to put it another way, the only discrimination that a trial judge can exercise is *against* frivolity. This the majority opinion states is proper.

> "But in order to avoid or minimize abuse and waste, a State may appropriately hedge about the opportunity to prove a conviction wrong. When a State not only

gives leave for appellate correction of trial errors but must pay for the cost of its exercise by the indigent, it may protect itself so that frivolous appeals are not subsidized and public moneys not needlessly spent. The growing experience of reforms in appellate procedure and sensible, economic modes for securing reviews still to be devised, may be drawn upon to the end that the State will neither bolt the door to equal justice nor support a wasteful abuse of the appellate process."

There can be no possible inference from a reading of the statute that our legislature intended one class of indigent appellant a review while preventing a difference class. Nor [fol. 30] is such discrimination affected in practice. This is born out by the cases of:

In re Mason v. *Cranor*, 42 Wn (2d) 610
State ex rel Bird v. *Superior Court*, 30 Wn. (2d) 110
30 Wn (2d) 785
State ex rel Maur v. *Superior Court*, 163 Wn. 459

For obvious reasons the respondent adopts in toto that portion of Justice Burton's dissenting opinion beginning at page 799 entitled 2 Equal Protection to page 805, and gives added emphasis to the following excerpts which directly apply to the present cause.

"That is, the issue here is not the typical equal protection question of the reasonableness of a "classification" on the basis of which the State has imposed legal disabilities, but rather the reasonableness of the State's failure to remove natural disabilities. The Court holds that the failure of the State to do so is constitutionally unreasonable in this case although it might not be in others. I submit that the basis for that holding is simply an unarticulated conclusion that it violates "fundamental fairness" for a State which provides for appellate review, and thus apparently considers such review necessary to assure justice, not to see to it that such appeals are in fact available to those it would imprison for serious crimes. That, of course, is the traditional language of due process, see *Betts* v. *Brady* 316 U.S. 455,462, and I see no reason to import new substance into the concept of equal protection to dispose

of the case, especially when to do so gives rise to the all-too-easy opportunity to ignore the real issue and solve the problem simply by labeling the Illinois practice as invidious "discrimination."

. . . . . .

"It is argued finally that, even if it cannot be said to be "arbitrary," the failure of Illinois to provide petitioners with the means of exercising the right of appeal that others are able to exercise is simply so "unfair" as to be a denial of due process. I have some question whether the non-arbitrary denial of a right that the State may withhold altogether could ever be so characterized. In any event, however, to so hold it is not enough that we consider free transcripts for indigents to be a desirable policy or that we would weigh the competing social values in favor of such a policy were it our function to distribute Illinois' public funds among alternative uses. Rather the question is whether some method of assuring that an indigent is able to exercise his right of appeal is "implied" in the concept of ordered liberty," *Palko* v. *Connecticut*, 302 U.S. 319, 325, so that the failure of a State so to provide con- [fol. 31-73] stitutes a "denial of fundamental fairness, shocking to the universal sense of justice," *Betts* v. *Brady, supra.*

It is respectfully submitted that the constitutional provisions of due process and equal protection have not been violated in cause, therefore the writ should be denied.

Respectfully submitted, Don Eastvold, Attorney General, Michael R. Alfieri, Assistant Attorney General, Attorneys for Respondent.

[fol. 74] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 33928

In the Matter of the Application for a Writ of Habeas Corpus of

TOM ESKRIDGE, Petitioner,

v.

MERLE E. SCHNECKLOTH, as Superintendent of the Washington State Penitentiary, Respondent.

ORDER DENYING PETITION—Filed September 26, 1956

The above entitled matter having come on for hearing on September 21, 1956, before Department Two of this Court, upon the petition of Tom Eskridge and the return and answer of the respondent; and the court having heard oral argument presented on behalf of respondent, and having considered all of the questions and issues raised by petitioner and found them to be without merit;

It is Ordered that the petition be, and the same is, hereby denied.

Dated September 21, 1956.

By the Court: Charles T. Donworth, Chief Justice.

[fol. 75] THE SUPREME COURT, STATE OF WASHINGTON,
OLYMPIA

Benj. T. Hart
Clerk

Archie B. Stewart
Deputy Clerk

October 3, 1956.

Mr. Tom Eskridge,
19590, P. O. Box 520,
Walla Walla, Washington.

Re—No. 33928—In the Matter of the Application for a writ of habeas corpus of Eskridge vs Schneckloth

DEAR SIR:

Judge Donworth, the Chief Justice, has directed by order that the exhibits and the papers attached to your petition be returned to you. They are enclosed.

No transcript of the arguments made in court is ever made and we are therefore not able to furnish you with the transcript of the respondent's oral argument. A copy of the order denying your petition is enclosed.

In answer to your letter of September 22d, this case has now been decided by denying the petition. It is therefore too late to traverse the respondent's memorandum except that a petition for rehearsing of the case may be made at any time within thirty days from the filing of the order denying the petition. The date of the order was September 26th.

Yours very truly, Benj. T. Hart, Clerk.

BTH: hw
Enc.

Copy to Mr. Schneckloth, Mr. Alfieri, Assistant Attorney General.

[fol. 76] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 33928

In the Matter of the Application for a Writ of Habeas Corpus of

TOM ESKRIDGE, Petitioner,

vs.

MERLE E. SCHNECKLOTH, as Superintendent of the Washington State Penitentiary at Walla Walla, Washington, Respondent

MOTION FOR REHEARING EN BANC—Filed October 8, 1956

To the Honorable Charles T. Donworth, Chief Justice of the Above Entitled Court:

Comes now Tom Eskridge, above named petitioner, and moves the Court for an order granting him a rehearing, en banc, in the above entitled matter for the reason and upon the ground as follows:

Petitioner had no possible opportunity to challenge, deny or refute any of the charges, allegations, and untruths set forth in the Memorandum brief of respondent's return and answer because Attorney General Don Eastvold through his deputy, Michael R. Alfieri, in Olympia, Washington, acting for the respondent in this cause, delayed placing a copy of said memorandum brief in the mail for service on petitioner, until the 20th day of September, 1956, knowing full well that petitioner, acting as his own attorney in this matter and held in confinement in the state penitentiary at Walla Walla, Washington, which is a distance of some two or three hundred miles from Olympia, could not receive it until the afternoon of the 21st day of September, 1956, the date the above entitled matter came on for hearing before Department Two of this honorable Court.

For the above reason petitioner prays that the Court's previous judgment in this matter will be set aside so that

petitioner will have his rightful opportunity to reply to respondent's memorandum brief.

Tom Eskridge, petitioner pro se.

Dated this 4th day of October, 1956.

[fol. 77] IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 33928

In the Matter of the Application for a Writ of Habeas Corpus of

TOM ESKRIDGE, Petitioner,

vs.

MERLE E. SCHNECKLOTH, as Superintendent of the Washington State Penitentiary at Walla Walla, Washington, Respondent

ORDER DENYING PETITION FOR REHEARING—October 24, 1956

The court having considered the petition for a rehearing herein,

It Is Ordered that the petition be and it is hereby denied.

Dated this 24th day of October, 1956.

By the Court: Charles T. Donworth, Chief Justice.

[File endorsement omitted.]

[fols. 78-80] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, IN AND FOR THE COUNTY OF SPOKANE

No. 26088

STATE OF WASHINGTON, Plaintiff,

vs.

Tom Eskridge, alias Thos. Jacobs, alias T. Jacobson, alias J. H. Warren, alias John Lowery, alias George Gregory, Defendant

Transcript of Record in No. 11114

Filed in Clerk's Office, Supreme Court State of Washington, April 15, 1936. Benj. T. Hart Clerk.

[fol. 81] IN SUPERIOR COURT OF SPOKANE, COUNTY

VERDICT—November 13, 1935

Case No. 11114

Verdict of Guilty of Murder in the First Degree

We, the jury in the case of

THE STATE OF WASHINGTON, Plaintiff,

vs.

TOM ESKRIDGE, Defendant

find the defendant guilty, as charged in the information.
Spokane, Washington, November 13, 1935.

C. H. Anderson, Foreman.

[File endorsement omitted.]

[fol. 82] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF SPOKANE

No. 11114

STATE OF WASHINGTON, Plaintiff,

vs.

TOM ESKRIDGE, alias Thos. Jacobs, alias T. Jacobson, alias J. H. Warren, alias John Lowery, alias George Gregory, Defendant

SPECIAL VERDICT—November 13, 1935

If the jury should find the defendant, Tom Eskridge, guilty of murder in the first degree as charged in the Information, the jury will answer the following question.

Question: Shall the death penalty be inflicted upon the defendant, Tom Eskridge?

Answer: No.

Dated this 13 day of November, 1935.

C. H. Anderson, Foreman.

[File endorsement omitted.]

[fol. 83] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, IN AND FOR THE COUNTY OF SPOKANE

No. 11114

[Title omitted]

MOTION FOR NEW TRIAL—Filed November 14, 1935

Comes now the above named defendant by Donovan & Donovan, his attorneys, and moves the Court for an order granting him a new trial in the above entitled cause, for the reason and upon the grounds as follows, to-wit:

1. Newly discovered evidence, material for the defendant which he could not have discovered with reasonable diligence and produced at the trial.

2. Accident and surprise.

3. Error of law occurring at the trial and accepted to by the defendant.

4. Misconduct of the jury.

5. That the jury received evidence, papers and documents not allowed by the Court.

6. That the verdict is contrary to law and evidence.

Donovan & Donovan, Attorneys for Defendant.

Copy Received Nov. 14, 1935, Prosecuting Attorney, Spokane County, Washington.

[File endorsement omitted.]

[fol. 84] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, IN AND FOR THE COUNTY OF SPOKANE

No. 11114

[Title omitted]

MOTION FOR AN ORDER EXTENDING TIME IN WHICH TO PREPARE AND FILE AFFIDAVITS IN SUPPORT OF MOTION FOR A NEW TRIAL—Filed November 14, 1935

Comes now the above named defendant by Donovan & Donovan, his attorneys, and moves the Court for an order granting him an extension of time of twenty (20) days in addition to the time allowed by law in which to prepare and file affidavits in support of his motion for a new trial.

This motion is based on the files and records herein and upon the affidavit annexed hereto.

Donovan & Donovan, Attorneys for Defendant.

Copy Received Nov. 14, 1935, Prosecuting Attorney, Spokane County, Washington.

[File endorsement omitted.]

[fol. 85] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, IN AND FOR THE COUNTY OF SPOKANE

[Title omitted]

AFFIDAVIT OF W. C. DONOVAN IN SUPPORT OF MOTION FOR EXTENSION OF TIME TO FILE AFFIDAVITS IN SUPPORT OF MOTION FOR A NEW TRIAL.

STATE OF WASHINGTON,
County of Spokane, ss.:

W. C. Donovan, being first duly sworn on oath, deposes and says: That affiant and Ambrose J. Donovan were appointed by the Court to defend the above named defendant on October 17, 1935. That the charge against the said defendant was murder in the first degree. That defendant entered a plea of not guilty on said day and that subsequently said plea was withdrawn and a motion made for an extension of time, or a continuance of the said cause until the December term of the above entitled Court, in order that the said attorneys might have sufficient time to prepare a proper and legal defense. That at the time of filing said information the State, also, filed a list of witnesses, approximately thirty-eight (38), and that subsequently the State filed a list of additional witnesses. That the said motion for a continuance was argued before the Presiding Judge of said Court and the same was denied.

[fol. 86] That the said attorneys for the defendant worked diligently during the interval betwen the denial of said motion and the day set for trial, to-wit: November 4, 1935. That because of the large list of witnesses furnished by the State and further because of the fact that the time was so short that the attorneys for the defendant herein were not able to make as complete and satisfactory investigation of all the facts surrounding the alleged crime and because of the shortness of time, they were not able to properly prepare the defense upon the charge. That from time to time during the progress of their investigation information came to them that would have been beneficial to the defendant in his preparation of the defense but because of the shortness of time allowed it was impossible

for the said attorneys to investigate fully and in some cases even partially the information that was furnished by persons who pretended to know facts that would aid the defendant in the trial and for that reason the attorneys for the defendant were compelled to go to trial without adequate and proper preparation due to the refusal of the Court to grant sufficient time for the preparation of defendant's case.

That subsequent to November 4, 1935, the day upon which the said defendant was brought into Court for trial, there has come to these attorneys information from various sources that adequately convinces them of the defendant's innocence but by reason of the necessary work in the trial of said cause the said attorneys have not been able to thoroughly investigate all or even a partial number of the witnesses that would be of value to the defendant.

That the defendant's attorneys have information that is material and necessary and that if time is granted them [fol. 87] before the argument for a new trial they will be able to furnish the Court with substantial and complete information that will exonerate this defendant from the Commission of the crime of which he was put on trial. The defendant's attorneys have used all diligence in attempting to secure all information and that the newly discovered evidence is material and a large portion of it has come to these attorneys subsequent to the submission of the cause to the jury, and that the information sought could not have been discovered by this defendant or his attorneys prior to the trial. Subsequent to the rendering of the verdict this affiant and his associate have secured information that in their opinion if presented to the Court, with proper time to complete the investigation would completely exonerate this defendant from the charge upon which he was tried.

W. C. Donovan.

Subscribed and sworn to before me this 14th day of November, 1935.

Wm. Lucht, Jr., Notary Public in and for the State of Washington, residing at Spokane.

Copy Received Nov. 14, 1935, Prosecuting Attorney, Spokane County, Wash.

[fol. 88] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, IN AND FOR THE COUNTY OF SPOKANE

No. 11114

[Title omitted]

MOTION FOR AN ORDER IN ARREST OF JUDGMENT—Filed November 14, 1935

Comes now the defendant by Donovan & Donovan, his attorneys, and moves the Court for an order in arrest of judgment for the reason and upon the grounds:

1. That the facts as stated in the information do not constitute a crime.
2. That evidence was introduced in the case which was entirely collateral to the issues involved and excepted to by the defendant.
3. That the information is duplicious.
4. That there was a material variance between the allegations of the information and the proof adduced at the trial as to amount to an entire failure of proof at the trial.

Donovan & Donovan, Attorneys for Defendant.

Copy Received Nov. 14, 1935, Prosecuting Attorney, Spokane County, Wash.

[File endorsement omitted.]

[fol. 89] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, IN AND FOR THE COUNTY OF SPOKANE

No. 11114

[Title omitted]

AFFIDAVIT OF LESLIE M. CARROLL IN RESISTANCE OF MOTION FOR NEW TRIAL—Filed November 21, 1935

STATE OF WASHINGTON,
County of Spokane, ss.:

Leslie M. Carroll, being first duly sworn, upon oath deposes and says: That he is a Deputy Prosecuting Attorney in and for Spokane County, Washington, and that as such

he, together with Ralph E. Foley, Prosecuting Attorney for Spokane County, Washington, has had charge of the prosecution of the above entitled case, and that of his knowledge the defense counsel, W. C. Donovan and Ambrose Donovan, were in consultation with the above named defendant with reference to the above case on or about September 25th, 1935; that supplemental and in addition to this there was an item printed in the Spokane Daily Chronicle of September 25, 1935, on page one, which reads as follows:

"*Eskridge Hires Two Attorneys*

"W. C. Donovan and Ambrose Donovan were today retained by Harry Eskridge as defense counsel at the trial in which the state will ask the death penalty for the murder of Harry J. Phillips here on July 30th.

[fol. 90] "We have a strong defense prepared and will ask the Superior Court to make a special setting for the case so that it will go to trial in October" W. C. Donovan said today. * * *

'We are anxious to go to trial as soon as possible' Mr. Donovan said * * *"

That the affiant feels that the defendant has had more than sufficient time with which to prepare his defense, and that the motion for a new trial on this ground should be denied.

Leslie M. Carroll.

Subscribed and sworn to before me this 20th day of November, 1935.

C. C. Quackenbush, Notary Public in and for the State of Washington, residing at Spokane.

Copy received this 21st day of November, 1935.

Donovan & Donovan, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 90a] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF SPOKANE

No. 11114

ISSUE OF LAW—Filed November 27, 1935

To the above named Defendants and to Donovan & Donovan, your attorneys.

You are hereby notified that the undersigned will on Saturday, the 30th day of November, 1935, the next regular day set apart by the rules of said Court for hearing issues of law, bring on for hearing and trial the issues of law raised by the service of the Motion for New Trial, and Motion for order in arrest of judgment.

Ralph E. Foley & Leslie M. Carroll,
Attorneys for Plaintiff.

Due service hereof is admitted this 27th day of November, 1935.

Donovan & Donovan, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 91] IN THE SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

No. 11114

[Title omitted]

ORDER DENYING MOTION FOR NEW TRIAL AND MOTION FOR AN ORDER IN ARREST OF JUDGMENT—November 29, 1935.

On this 29th day of November, 1935, this cause came regularly on for hearing by the Court on Defendant's Motion for New Trial and Motion for an order in arrest of Judgment, and after hearing said Motion and the argument of counsel

and the Court being fully advised in the premises, it is by the Court—

Ordered, That said Motion be, and the same is hereby Denied Defendant excepts, and exception allowed.

Done in open Court this 29th day of November, 1935.

Fred H. Witt, Judge.

Attorney Ralph E. Foley and Leslie M. Carroll, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 92] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR SPOKANE COUNTY

Case No. 11114

THE STATE OF WASHINGTON, Plaintiff,

vs.

TOM ESKRIDGE, Defendant.

JUDGMENT, SENTENCE AND COMMITMENT UPON VERDICT OF GUILTY—December 14, 1935.

PENITENTIARY

On this 14th day of December 1935, the above named defendant came into open Court for pronouncement of judgment and sentence, and being asked by the Court if he had any legal cause to show why judgment of this Court should not be pronounced in his case, he makes his statement, the defendant being represented by his counsel.

Thereupon, it is now by the Court considered and adjudged upon the verdict of the jury finding the defendant guilty of the crime of Murder in first Degree, as charged in said information, that the defendant now before the Court is guilty and it is now by the Court considered, Ordered Adjudged and Decreed, that said defendant be punished by

confinement at hard labor in the Washington State Penitentiary, for a term of his natural life, and shall pay the costs of this prosecution taxed at $416.05.

That said defendant shall stand committed to said institution until this sentence is complied with.

The said defendant is hereby remanded to the custody of the Sheriff of said County to be detained and delivered into the custody of the proper officers for transportation to, and confinement in, said institution.

Done in open Court, in the presence of the said defendant, this 14th day of December, 1935.

Fred H. Witt, Judge.

[File endorsement omitted.]

[fol. 93] In Superior Court, State of Washington,
County of Spokane Court Journal.

[Title omitted]

Journal Entry of Oral Notice of Appeal—
December 14, 1935

* * * * * *

Defendant gave oral notice of Appeal to the Supreme Court.

Fred H. Witt, Judge.

[fol. 94] IN SUPERIOR COURT OF SPOKANE COUNTY

Criminal #11114

STATE

vs.

ESKRIDGE

Letter from Defendant Requesting Transcript—Filed January 2, 1936

In Replying Refer to No. 16223

P.O. Box 520
Walla Walla, Wash.
December 30, 1935.

Honorable Fred H. Witt, Judge,
Superior Court of Spokane County,
Spokane, Washington.

DEAR SIR:

An article appeared in the Spokesman Review December 22, 1935 stating that my mother had raised the money to finance the appeal of my case to the State Supreme Court. That is entirely untrue as Mr. M. E. Mack, an attorney there can tell you.

The reasons I want the Supreme Court to grant me a new trial are as follows:

1. I did not have time enough to prepare a proper defense. The state appointed my attorneys October 17, 1935 and my trial commenced November 4, 1935.

2. The Information was duplicious where as it was likely that the jury was divided as to whether defendant was guilty of murdering Mr. Phillips with a premeditated dezign to effect his death or that the defendant was guilty of murdering Mr. Phillips while attempting to committ the crime of robbery. There was not one bit of evidence presented at my trial to even presume that I was guilty of either charge.

3. An eye-witness was *araible* to me to prove that at least one of the state's witnesses committed perjury on the

witness stand but my attorney absolutely refused to call that witness in my behalf.

4. One of my attorneys Mr. W. C. Donovan, in his argument to the jury said "We admit that the defendant had possession of that car."

[fol. 95] 5. My attorneys refused to call witnesses residing in Spokane that could have truthfully testified to my where-a-bouts at the time Mr. Harry J. Phillips met his death. And also they failed to call highly reputed persons from Seattle and Walla Walla, Wash. who would have testified in my behalf.

6. I have discovered new evidence and more witnesses to prove my innocence of the crime that I have been convicted of.

7. The jury disregarded many of your instructions to them.

You said when you sentenced me, that there was no doubt whatsoever in your mind that I was the man that killed Mr. Phillips. If such is the case is there any doubt as to whether it was murder and as to the degree?

I hope you will consider this letter and grant me a transcript of all the records in my case and have it delivered to me here.

Yours truly, Thomas Eskridge.

[File endorsement omitted.]

[fol. 96] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF SPOKANE

No. 11114

[Title omitted]

MOTION RESISTING APPLICATION FOR A TRANSCRIPT AT EXPENSE OF SPOKANE COUNTY—Filed January 2, 1926

Comes now the prosecuting attorney in and for Spokane County, Washington, by his deputy, Leslie M. Carroll, and moves the Court for an order denying the application for transcript at the expense of Spokane County in the above

entitled matter. This motion is based upon the records and files herein and the affidavit hereto attached.

Leslie M. Carroll, Deputy Prosecuting Attorney.

STATE OF WASHINGTON,
County of Spokane, ss:

Leslie M. Carroll, being first duly sworn, on oath deposes and says: That he is a deputy prosecuting attorney in and for Spokane County, Washington, and as such has had charge of the prosecution of the above entitled case; that the above named defendant was accorded a fair and impartial trial, and in his opinion no grave or prejudicial errors occurred therein, and that the ends of justice would not be served by the granting of an application for a transcript of the record at the expense of Spokane County; that the jury found the defendant guilty of murder in the first [fol. 97] degree and imposed a sentence of life imprisonment; that it is believed that Spokane County is not justified in incurring the expense of getting out a transcript in this case; that the matter of appeal is not a matter of right, but a pure matter of discretion.

Leslie M. Carroll.

Subscribed and sworn to before me this 2nd day of January, 1936.

C. C. Quackenbush, Notary Public in and for the State of Washington, residing at Spokane.

[File endorsement omitted.]

[fol. 98] IN THE SUPERIOR COURT OF WASHINGTON, IN AND FOR THE COUNTY OF SPOKANE

(Case #11,114)

[Title omitted]

December 30, 1935.

PAUPER OATH OF THOMAS ESKRIDGE—Filed January 2, 1936

STATE OF WASHINGTON,
County of Walla Walla, ss.:

I, Thomas Eskridge, being first duly sworn on oath, depose and say: that I am the above named defendant; that I have no property, either real or personal; no money or funds with which to secure a transcript of the evidence in said case, or an abstract of the record thereof; and have no means of providing the same; and for that reason I make this pauper oath.

I believe that I have just and sufficient grounds for an appeal in said case, and desire to perfect such an appeal.

Respectfully submitted, Thomas Eskridge, Defendant

AFFIDAVIT

The defendant, Thomas Eskridge, first being duly sworn, says that the above statement is his and to the best of his belief is true

P. E. Mahoney, Notary Public in and for the State of Washington, at Walla Walla, Washington
(Seal)

File endorsement omitted.

[fol. 99] IN SUPERIOR COURT OF SPOKANE COUNTY

January 3rd, 1936.

Tom Eskridge,
Walla Walla,
Washington

DEAR SIR:

Your application supported by your affidavit for an order requiring a Statement of Facts or transcript to be furnished in your appeal at the expense of the County was filed and the prosecutor notified thereof. The prosecuting attorney filed a motion resisting your application, a copy of which I am herewith enclosing.

I am writing to inquire whether you want the Court to fix a definite time for a hearing on your applicaiton or whether you want the Court to pass upon it without any further hearing. If you decide on the former, I will immediately fix a date and let you know.

Respectfully yours, Fred H. Witt, Judge.

[File endorsement omitted.]

[fol. 100] IN SUPERIOR COURT OF SPOKANE COUNTY

No. 11114

In Replying Refer to No. 16223

P. O. Box 520,
Walla Walla, Wash.
January 7, 1936.

Honorable Fred H. Witt, Judge,
Superior Court Spokane County,
Spokane, Washington.

DEAR SIR:

In reply to your letter of January 3, 1936, I wish to state that I have no attorney nor funds with which to procure one.

I request that you fix a definite time for a hearing on my application for Spokane County to furnish me with a transcript of my case. Also, I request that you order me to be returned to Spokane that I may appear at the hearing in my own behalf.

I don't believe that it is possible for me to explain fully, by correspondence, why Spokane County, should pay the cost of the transcript and also explain why I think that I am entitled to a new trial.

Respectfully yours, Thomas Eskridge.

[Filo endorsement omitted]

[fol. 101] (Postage Stamps 18 cts.)

——Ten Days to
——Box 520
——Walla, Wash.
——as Eskridge.

Registered 5560

Registered 3093

Honorable Fred H. Witt, Judge, Superior Court, Spokane, Wash.

(On back of envelope appear the following Post Marks):

Walla Walla, Wash., Jan. 8, 1936, Registered. Walla Walla, Wash., Jan. 8, 1936, Registered. Spokane, Wash., Jan. 9, 1936, Registered. Spokane, Wash., Jan. 9, 1936, Registered.

[fol. 102] IN SUPERIOR COURT OF SPOKANE COUNTY

No. 11114.

January 10th, 1936.

Tom Eskridge,
P.O. Box 520,
Walla Walla, Washington.

No. 16223

DEAR SIR:

I acknowledge receipt of your letter of January 7th.

I have fixed the date of January 20th, 1936, at 9:30 A.M. as the time for hearing on your application to have a Statement of Facts on your appeal furnished at the expense of Spokane County.

This hearing does not require your personal presence. You may be represented by an attorney or may present all your evidence by furnishing affidavits in support of your application.

Your request, therefore, that I make an order returning you to Spokane County is denied.

Respectfully yours. Fred H. Witt, Judge.

[File endorsement omitted.]

[fol. 103] IN SUPERIOR COURT OF SPOKANE COUNTY

In Replying Refer to No. 16223

P. O. Box 520,
Walla Walla, Wash.
January 15, 1936.

Honorable Fred H. Witt, Judge,
Superior Court of Spokane County,
Spokane, Washington.

DEAR SIR:

I acknowledge receipt of your letter of January 10th, 1936 and in reply, I am enclosing an affidavit in support of my application for a transcript of my case, to be furnished at the expense of Spokane County.

I hope you will consider this affidavit carefully and also the fact that the prosecution failed to prove any of the alleged facts or elements of crime charged in the information, with the possible exception, however, the fact that Mr. Phillips did die from a gun shot wound on or about the 30th day of July, 1935 in Spokane County.

You sentenced me December 14, 1935, and said to me then, that there was no doubt in your mind but that I was the man that killed Mr. Phillips. I do think though, that you arrived at such a firm conviction by believing the word of the police officers and the word of the Prosecuting Attorney and his deputy rather than just my simple denial.
[fol. 104] Of course I understand now that, that would be natural for any man in your position, but at the time I was placed on trial, November 4th, 1935, I was under the impression that it was not necessary that I prove myself innocent but that the State was compelled to prove me guilty, if I was guilty, beyond a reasonable doubt.

If you, the police officers and the prosecuting attorney beleive me guilty of the crime charged in the Information, each of you also belgive that I should suffer the death penalty. Therefore, if I can secure a transcript of my case, I will get a new trial and at that trial I will prove myself innocent of the crime charged beyond *all* doubt or else the State will have a greater opportunity to prove me guilty.

The jurors at my trial swore on their oath that they did not object to inflicting the death penalty on a conviction of murder in the first degree if it was gained from direct or circumstanial evidence. Neither I nor my counsel asked for sympathy or mercy and if I am not entitled to justice the taxpayers of this State are. As I am only thirty one years of age and beleive myself capable of serving thirty or thirty-five more years in this prison, it would be much less expense to the taxpayer to pay for a transcript and a new trial for me, whereas, I would be found guilty and sentenced to hang or else completely exonorated.

I am writing this letter simply for the reason that I want myself and the taxpayers of the State of Washington to [fol. 105] have justice which, I trust, we would have if it was entirely left to you.

I am not a habitual criminal though you may have in your possession papers and letters suggesting that I am.

In a recent letter from my Mother she informed me that she was unable to help me financially.

Respectfully yours, Thomas Eskridge.

[File endorsement omitted.]

[fol. 106] (Envelope)

If not delivered in 10 days Return to P.O. Box 520 Walla Walla, Washington. Thomas Eskridge.

Postage Stamps 21 cts.

Registered.
Registered 3206

Registered 735C

Registered.
Fred H. Witt, Judge, Superior Court, Spokane, Wash.

(On back of envelope, postmarks as follows):

Walla Walla, Wash., Jan. 16, 1936, Registered. Walla Walla, Wash., Jan. 16, 1936, Registered. Spokane, Wash., Jan. 17, 1936, Registered.

[fol. 107] IN THE SUPERIOR COURT OF WASHINGTON, IN AND FOR THE COUNTY OF SPOKANE

Criminal Case No. 11114

[Title omitted]

AFFIDAVIT IN SUPPORT OF REQUEST OF TRANSCRIPT OF EVIDENCE AND ABSTRACT OF THE RECORD FOR APPEAL, AND MOTION THEREFORE—Filed January 17, 1936

STATE OF WASHINGTON,
County of Walla Walla, ss:

I, Thomas Eskridge, being first duly sworn on oath, depose and say: That I am the defendant in the above named action; that I was found guilty of the charge upon

which said action was brought on the 4th day of November, 1935, or thereabouts; that shortly thereafter my motion for a new trial in said action was denied by Judge Fred H. Witt, the presiding judge in said action; that I desire to appeal from said verdict and judgment and from the refusal of aforesaid presiding judge to grant a new trial therein.

That I am not guilty of said charge and have adequate and substantial grounds for a reversal of said judgment, and if granted a new trial will be able to establish my innocence of said charge. That I have shown by my affidavit heretofore filed in the above entitled action that I am without funds, property, or means of any kind with which to secure a transcript of the evidence and/or an abstract of the record thereof.

That the grounds for said appeal are as follows:

1. Disregard of the evidence adduced at said trial, and of the law as laid down by the Court in the instructions, by [fol. 108] the jury, showing passion and prejudice; and that said verdict was rendered on such passion and prejudice and not upon the law and evidence in said case. That in particular said jury disregarded the law as laid down in the following instructions, and portions thereof: to-wit:

Number	2	Instruction,	Paragraph	2.
"	3	"	"	1
"	4	"	"	1
"	5	"	"	2, 3
"	8	"	"	1, 2, 3, 4
"	11	"	"	1, 2, 3
"	12	"	"	1
"	14	"	"	1, 2, 3

2. Refusal of the presiding judge to grant defendant and his attorneys, appointed by the court, sufficient time in which to prepare this affiant's defense, and in this connection affiant alleges the facts to be as follows, to wit: that he never at any time employed said Ambrose J. Donovan and W. C. Donovan as his attorneys, and did not go into the facts of his defense thereto until after their appointment as his attorneys by the Court on the 17th day of October, 1935. That affiant was placed on trial November 4th, 1935. That in a certain affidavit in resistance of affiant's motion

for a new trial, one Leslie M. Carroll, Deputy Prosecuting Attorney in and for Spokane County, State of Washington, sets forth an extract from the Spokane Daily Chronicle of September 25th, 1935; which article purported to say [fol. 109] that said Donivan and Donivan has been retained by affiant as attorneys for his defense in said cause, but did not set out that an article appeared in the Spokesman Review, a newspaper also published in said City of Spokane, subsequent to aforesaid article in the Chronicle and prior to said October 17th, 1935; stating:

"Eskridge refuses to talk to own attorneys . . . ." That the facts in respect to this matter were and are as heretofore alleged; namely that said attorneys never were employed by affiant and that affiant never discussed the facts of his defense to said charge prior to their appointment by the Court, October 17th, 1935.

In this connection affiant refers to the affidavit of one of the said attorneys, namely W. C. Donivan, dated the 14th day of November, 1935; the same being in support of motion for extention of time to file affidavit in support of motion for new trial which affidavit is on file in this case and is hereby referred to and by reference made a part hereof as fully as though set out herein.

That in order to establish the innocence of affiant to said charge, it was necessary for affiant to contact various witnesses in Seattle and Walla Walla Washington, and Umatilla and Portland, Oregon, and to secure their presence at said trial: that the testimony of said witnesses, if they could have been secured by affiant, would have established the innocence of affiant to said charges. That by reason of the short time given defendant and his attorneys for the preparation of his defense, and the refusal of the Court to set over said trial until December, 1935 as duly requested by affiant, made it impossible for affiant to secure such wit- [fol. 110] nesses and to have a fair trial as was his constitutional right under the Constitution of the State of Washington.

3. Newly discovered evidence, material to affiant's defense, which could not with reasonable diligence have been discovered prior to the trial of the affiant, will show that affiant was not in the vicinity where the alleged crime was

committed at the time that the same was committed; and that the same will be testified to by reputable citizens who saw and identified affiant at points wid-ly removed from the scene of said crime at the time the alleged crime was committed.

4. That certain of the evidence given by certain of the witnesses on oath for the State at the trial of the affiant was false and untrue, and known to be so false and untrue by said witnesses at the time of testifying to the same. That upon a new trial affiant will be able to produce evidence to establish the fact that such perjury was committed by certain of said witnesses. That said false and untrue statements of said witnesses were so made by them respecting certain material facts and issues in said case.

Thomas Eskridge, Defendant.

Subscribed and sworn to before me this 15th day of January, 1936.

P. E. Mahoney, Notary Public in and for the State of Washington, residing at Walla Walla. (Seal.)

[fol. 111] MOTION

Comes now the above named defendant and moves the Court for an Order directing the County of Spokane, State of Washington, and the County Commissioners thereof to furnish to the defendant in the above named and entitled case, being Criminal Case #11714, in the records and files of the above entitled Court without cost to said defendant.

This motion is based upon the above and foregoing affidavit, and upon all the records and files in said case.

/ Thomas Eskridge, Defendant in propria persona.

[File endorsement omitted.]

[fol. 112] In The Superior Court of The State of Washington in and for the County of Spokane

No. 11114

[Title omitted]

Motion and Affidavit of Leslie M. Carroll Resisting Request for Transcript of the Record for Appeal—Filed January 20, 1936

Comes now Ralph E. Foley, Prosecuting Attorney in and for Spokane County, Washington, by his deputy Leslie M. Carroll, and moves the Court, Judge Fred H. Witt presiding, for an order denying the request of the defendant for a transcript of the record in the above entitled case at the expense of Spokane County, Washington.

This motion is based upon the records and files herein and the affidavit of Leslie M. Carroll hereto attached.

Leslie M. Carroll, Deputy Prosecuting Attorney.

[File endorsement omitted.]

[fol. 113] State of Washington,
County of Spokane, ss:

Leslie M. Carroll, being first duly sworn, on oath deposes and says: That he is a Deputy Prosecuting Attorney in and for Spokane County, Washington, and as such in charge of the above entitled case; that the defendant received a fair and impartial jury trial and that the jury before rendering its verdict had the instructions of the Court and rendered a verdict based on the evidence from the witness stand and the instructions as given by the Court; that the defendant was in consultation with Attorneys W. C. Donovan and Ambrose Donovan with reference to the above case on or about September 25, 1935; that there was printed an item in the Spokane Daily Chronicle on September 25, 1935 on page one, which reads as follows:

"W. C. Donovan and *Ab*rose Donovan were today retained by Harry Eskridge as defense counsel at the

trial in which the state will ask the death penalty for the murder of Harry J. Phillips here on July 30th.

" 'We have a strong defense prepared and will ask the Superior Court to make a special setting for the case so that it will go to trial in October,' W. C. Donovan said today.* * * * * * *

" 'We are anxious to go to trial as soon as possible,' Mr. Donovan said. * * *"

Affiant feels that the defendant has had more than sufficient time in which to prepare his defense and affiant further attaches to and makes a part of this motion an affidavit by Ambrose Donovan, one of the defense [fol. 114] attorneys, which indicates that defendant's counsel did everything which counsel should do to protect defendant's interests in the case.

Affiant further states and it is verified by affidavit of defendant's counsel that had the defendant any witnesses who would prove him elsewhere than in Spokane, Washington on July 30th, 1935 that he had ample and sufficient time to subpoena those witnesses, but that he did not do so; that there is no evidence of perjury by witnesses committed at the trial of the defendant.

Affiant further states that justice would not be promoted by furnishing the defendant with a free statement of facts to be made by the official court reporter and paid for by the County Treasurer in that the defendant has been accorded a fair and impartial trial and in affiant's opinion no grave or prejudicial errors occurred therein.

Affiant further states that the defendant on numerous occasions before the Superior Court of this County and State stated that he was an heir to certain property in the State of Virginia and should be made to use this property if he wishes to appeal.

Affiant further states that the matter of appeal is not a matter of right, but a pure matter of discretion of the Court.

Leslie M. Carroll.

Subscribed and sworn to before me this 20th day of January, 1936.

C. C. Quackenbush, Notary Public in and for the State of Washington, residing at Spokane.

[fol. 115] No. 11114

AFFIDAVIT OF A. J. DONOVAN

STATE OF WASHINGTON,
County of Spokane, ss:

A. J. Donovan, being first duly sworn, on oath deposes and says: That he was one of the two attorneys appointed by the court to defend Thomas Eskridge in the case of the State of Washington vs. Thomas Eskridge, defendant, Case No. 11114, which was tried in the superior court, Spokane County, on the 4th day of November, 1935, and continuing until the 13th day of November, 1935.

That prior to the arraignment of the said defendant and while he was being held in the city jail some time before the 25th of September the said Eskridge called this affiant to the city jail to take up the matter of his defence. That this affiant and his associate, W. C. Donovan, consulted with the said Eskridge several times subsequent to the date of his return and prior to the arraignment and no information relative to his defence was given at any time up to the time of his arraignment. That at one time he informed the affiant that money would be forthcoming for his defence and that shortly thereafter this affiant was informed that it [fol. 116] would be impossible for the defendant to raise money and he inquired as to whether or not the court would appoint a lawyer to defend him. Upon being told that the court would appoint an attorney he requested that this affiant and his associate take the case upon the court's appointment and this was done.

During these various consultations the defendant informed this affiant and his associate that he wanted a speedy trial and that 10 days was sufficient time in which to prepare for the said trial and that all information necessary for his defence would be given 10 days before the trial.

That the defendant entered a plea of "Not Guilty" as charged in the information to the crime of first degree murder and that shortly thereafter the court permitted his withdrawal of that plea in order that certain motions might be made and argued against the information. Said motions were made and argued, and denied approximately 10 days before the beginning of the trial.

That the defendant at all times refused, to give his attorneys any information upon which they might base the defence and that whatever defence was imposed was done without the cooperation or help of the defendant. That the only two witnesses suggested in Spokane by the defendant were the owner of the Golden Gate Cafe and an assayer whose place of business is on Sprague Avenue between Stevens and Washington Street. That this affiant interviewed those witnesses in the hope of establishing proof of the defendant's innocence and both witnesses were unable to be of any assistance.

That the witnesses referred to in Portland and Seattle from the information given this affiant and his associate could have no knowledge bearing on the case and their [fol. 117] testimony would have been without merit although this affiant endeavored to locate a service station employee in Portland whose name was not divulged and therefore this affiant has no knowledge as to what his testimony might have been.

That this affiant and his associate did everything in their power to protect the rights of said Eskridge and that it is the belief of this affiant that he had a fair trial.

A. J. Donovan.

Subscribed and sworn to before me on this 20th day of January, 1936.

C. C. Quackenbush, Notary Public for the State of Washington.

[fol. 118] IN SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF SPOKANE

#11114

January 20th, 1936.

Tom Eskridge,
Box No. 520,
Walla Walla, Washington.

No. 16223.

DEAR SIR:

The hearing on your application that you be furnished a transcript at the expense of Spokane County was held today and the application denied for the reasons stated in the Order which was signed, a copy of which is herewith enclosed.

Respectfully yours, Fred H. Witt, Judge.

Enc.o.

[fol. 119] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, IN AND FOR THE COUNTY OF SPOKANE

No. 11114

[Title omitted]

ORDER DENYING APPLICATION FOR TRANSCRIPT AT EXPENSE OF SPOKANE COUNTY—January 20, 1936

This matter came regularly on for hearing in open court on this 20th day of January, 1936, upon the application of the defendant for an order requiring a transcript on appeal to be furnished at the expense of Spokane County; and said application being heard upon the affidavit of the defendant and the counter-affidavits upon the part of the State; and the Court considering all the affidavits and being fully advised in the premises, it is

Ordered, That the application for transcript at the expense of Spokane County be, and is, hereby denied, for the reason that in the opinion of the Court, justice would not be promoted by furnishing the defendant with a free Statement

of Facts to be made by the Official Reporter and paid for by the county treasurer, in that defendant has been accorded a fair and impartial trial, and in the Court's opinion no grave or prejudicial errors occured therein.

Done in Open Court this 20th day of January, 1936.

Fred H. Witt, Judge.

[File endorsement omitted.]

[fol. 120] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, IN AND FOR THE COUNTY OF SPOKANE

No. 11114

[Title omitted]

CERTIFICATE TO TRANSCRIPT—March 24, 1936

STATE OF WASHINGTON,
County of Spokane, ss:

I, Frank C. Nash, County Clerk, and Clerk of the Superior Court of the State of Washington, for the County of Spokane, do hereby certify that the foregoing is a full, true and correct Transcript of so much of the record and files in the above entitled cause as I have been directed by the Prosecuting Attorney of Spokane County to transmit to the Supreme Court of the State of Washington.

In witness whereof, I have hereunto set my hand and affixed the seal of said Superior Court this 24th day of March, A.D. 1936.

Frank C. Nash, Clerk, By E. E. Burton, Deputy.
Seal Superior Court, Spokane County Washington.

[fol. 121] IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 26088

STATE OF WASHINGTON, Plaintiff

vs.

TOM ESKRIDGE, alias Thos. Jacob , alias T. Jacobson, alias J. H. Warren, alias John Lowery, alias George Gregory, Defendant.

Spokane County No. 11114

STATE OF WASHINGTON,
County of Thurston, ss:

I, Robert Holstein, Clerk of the Supreme Court of the State of Washington do hereby certify that the attached and foregoing is a full, true and correct copy of the Transcript of Record and the whole thereof, as the same was filed in the above entitled case on the 15th day of April, 1936, and now appears of record and on file in my office.

In Testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Olympia, this 28th day of October, 1957.

Robert Holstein, Clerk of the Supreme Court, State of Washington. (Seal.)

[fol. 122] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 26088

STATE OF WASHINGTON, EX REL. THOMAS ESKRIDGE

vs.

FRED H. WITT, Judge of the Superior Court of the State of Washington in and for Spokane County

MOTION FOR WRIT OF MANDATE--Filed February 14, 1936

STATE OF WASHINGTON,
County of Walla Walla:

Comes now the above entitled Relator, Thomas Eskridge, and moves the Court that a Writ of Mandate be duly issued out of the above entitled Court directed to Judge Fred H.

Witt of the Superior Court of the State of Washington in and for Spokane County; directing and requiring him to Order Spokane County and its proper officers, to furnish to the above entitled Relator, without cost to himself, a transcript of the evidence and an abstract of the record in that certain criminal cause heretofore tried in said Superior Court in and for the State of Washington known as State of Washington, Plaintiff vs. Thomas Eskridge, defendant, being criminal cause No. 11,114 in the files of the Clerk of said Court.

This motion is based upon the affidavit of said Relator and his petition under oath; both of which are attached hereto.

Thomas Eskridge, Relator, in propera persona

[fol. 123] No. 26088

AFFIDAVIT OF THOMAS ESKRIDGE IN SUPPORT OF MOTION FOR WRIT OF MANDATE—Filed February 14, 1936

STATE OF WASHINGTON,
County of Walla Walla:

I, Thomas Eskridge, being first duly sworn on oath, depose and say: That I was the defendant in that certain cause known as State of Washington, Plaintiff, vs. Thomas Eskridge, Defendant (Criminal Cause No. 11,114) which was tried in the Superior Court of the State of Washington in and for Spokane County; before Judge Fred H. Witt, presiding judge; on or about the 4th day of November, A. D. 1935; which trial resulted in a verdict of guilty with a recommendation of clemency, to the charge of Murder in the first degree. That shortly thereafter my motion for a *new* trial in said cause duly made was denied by said Judge Fred H. Witt.

That I am not guilty of said charge and have adequate and substantial grounds for a reversal of said judgment and if granted a new trial thereof will be able to establish my innocence of said charge. That I desire to appeal from said verdict and judgment and from the refusal of aforesaid Presiding Judge to grant a new trial thereof; that as I

have shown by my affidavit, heretofore filed in the above mentioned cause, being criminal cause No. 11,114 of the Superior Court in and for Spokane County; that I am without money, funds, or property of any kind and have no means of securing the samewith which to secure a transcript of the evidence and/or an abstract of the record of said cause.

[fol. 124] That after the denial for said motion for a new trial, Affiant duly moved said Court for an order compelling Spokane County to furnish Affiant with a transcript of said evidence and an abstract of said record so that Affiant might appeal from said verdict and judgement; which motion was denied. That Affiant is still without funds, money, or property of any description and is unable to secure the same with which to secure said transcript of evidence and abstract of the record in said cause and is thereby unable to perfect Affiant's appeal from said verdict and judgement and Affiant will thereby be deprived of his constitutional rights to a fair and impartial trial of said charge.

That Affiant did not have a fair and impartial trial of said charge, for the following reasons:

1. Disregard of the evidence adduced at said trial, and of the law as laid down by the Court in the instructions, by the jury, showing passion and prejudice; and that said verdict was rendered on such passion and prejudice and not upon the law and evidence in said case. That in particular said jury disregarded the law as laid down in the following instructions, and portions thereof: to wit:

Number	2	Instruction,	Paragraph	2.
"	3	"	"	1
"	4	"	"	1
"	5	"	"	2, 3
"	8	"	"	1, 2, 3, 4
"	11	"	"	1, 2, 3
"	12	"	"	1
"	14	"	"	1, 2, 3

2. Refusal of the presiding judge to grant defendant and his attorneys, appointed by the Court, sufficient time in which to prepare this affiant's defense, and in this connec-

tion affiant alleges that the facts are as follows, to wit: That he never at any time employed said Ambrose J. Donovan and W. C. Donovan as his attorneys, and did not [fol. 125] go into the facts of his defense thereto until after their appointment as his attorneys by the Court on the 17th day of October, 1935. That Affiant was placed on trial November 4th, 1935.

That in order to establish the innocence of Affiant to said charge, it was necessary for affiant to contact various witnesses in Seattle and Walla Walla, Washington, and Umatilla and Portland, Oregon, and to secure their presence at said trial; that the testimony of said witnesses, if they could have been secured by affiant, would have established the innocence of affiant to said charges. That by reason of the short time given defendant and his attorneys for the preparation of his defense, and the refusal of the Court to set over said trial until December, 1935, as duly requested by affiant, made it impossible for affiant to secure such witnesses and to have a fair trial as was his constitutional right under the Constitution of the State of Washington.

3. Newly discovered evidence, material to the affiant's defense, which could not with reasonable diligence have been discovered prior to the trial of the affiant, will show that affiant was not in the vicinity where the alleged crime was committed at the time the same was committed: and that the same will be testified to by reputable citizens who saw and identified affiant at points wid-ly removed from the scene of said crime at the time the alleged crime was committed.

4. That portions of the evidence given by certain of the witnesses on oath for the State at the trial of the affiant was false and untrue, and known to be so false and untrue by said witnesses at the time of testifying to the same. That upon a new trial affiant will be able to produce evidence to establish the fact that such perjury was committed by certain of said witnesses. That said false and untrue statements of said witnesses were so made by them respecting certain material facts and issues in said case.

That if furnished said transcript of evidence and abstract of the record, Affiant will prosecute said appeal in his own behalf.

[fol. 126] That by reason of the limited time provided by law for appeal, Affiant has no plain, speedy and adequate remedy at law.

Thomas Eskridge, Affiant.

Subscribed and sworn to before me this 11th day of February, A.D. 1936.

P. E. Mahoney, Notary Public in and for the State of Washington, residing at Walla Walla.

My commission expires September 10, 1936.

[fol. 127] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 26088

[Title omitted]

PETITION FOR WRIT OF MANDATE—Filed February 14, 1936

Comes now Thomas Eskridge, the above entitled Relator, and shows and petitions the Court as follows:

I

That said Relator was the defendant in the case of State of Washington vs. Thomas Eskridge, being criminal cause No. 11,114 of the Superior Court of the State of Washington in and for Spokane County, That said trial being had before a jury in said court, Judge Fred H. Witt presiding; said trial was had about a charge of Murder in the first degree, which resulted in a verdict of guilty with a recommendation for clemency. That thereafter said judge duly sentenced said defendant, the Relator herein to the Washington State Penitentiary at Walla Walla.

That Relator duly moved for a new trial of said charge and that the same was thereafter denied by said judge.

II

That the Relator at the time of his arrest for said crime, at all times since, and now, is without any money, funds, or

property of any description with which to secure counsel to assist him in the defense of said charge at said trial; and/or to secure a transcript of the evidence and an abstract of the record therein, and the assistance of counsel to prosecute and appeal on said conviction; and he has no means of securing the same; as shown by his affidavit on file with the Clerk of said Superior Court in and for Spokane County in said criminal cause No. 11,114.

[fol. 128] That Relator duly moved said Court for a transcript of said evidence at the expense of Spokane County; which motion was based upon affidavit of Relator filed therewith, setting forth the fact that said Relator did not have a fair and impartial trial of said charge of Murder in the first degree; and further setting forth errors in law and in fact which occurred at and prior to said trial; prejudicial to the rights of this Relator; which grounds were substantial and adequate, and entitled Relator to a reversal of said verdict and judgement and a new trial thereof.

That said motion was denied by said Judge Fred H. Witt. That by reason of such denial and the lack of funds Relator will be denied his constitutional rights to a fair and impartial trial of said charge of Murder in the first degree unless the above entitled Court shall cause to be issued from it to said Judge Fred H. Witt, its Writ of Mandate; ordering and directing said Judge Witt to make an order directing and requiring said County of Spokane, without cost to Relator, to deliver to him a transcript of the evidence of said trial and an abstract of the record thereof.

III

That if the Relator can secure from Spokane County without cost to himself a transcript of the evidence in said case and the abstract of the record thereof, he will be thereby enabled, acting in his own behalf, to prosecute his appeal from said verdict and judgement of guilty of said charge of Murder in the first degree. That Relator has set forth in his affidavit attached hereto, and marked Exhibit A, his grounds for such appeal, and claim of reversable error prejudicial to his defense occurring at and prior to said trial, which affidavit is hereby referred to, and by

reference made a part hereof as fully as though set out herein.

[fol. 129] IV

That Realator has no plain, speedy or adequate remedy at law.

Wherefore Relator prays that a hearing be had upon this, his petition, motion, and affidavit; and that upon said hearing the above entitled Court shall duly issue its Writ of Mandate ordering and compelling said Judge Fred H. Witt, Respondent, to duly make and enter an order in said criminal cause No. 11,114 of said County of Spokane to furnish to Relator a transcript of the evidence and an abstract of the record of said cause. And for such other and further relief as may be meet in the premises.

Thomas Eskridge, Relator, in propera persona.

Duly sworn to by Thomas Eskridge. Jurat omitted in printing.

[fol. 130] AFFIDAVIT OF THOMAS ESKRIDGE IN SUPPORT OF PETITION FOR WRIT OF MANDATE—Filed April 14, 1936

I, Thomas Eskridge, being first duly sworn on oath depose and say: That on or about the 10th day of August 1935, in the Superior Court of the State of Washington for Spokane County with Judge Fred H. Witt presiding, I entered a plea of guilty to a charge of grand larceny, with a promise from one Leslie M. Carroll, Deputy Prosecuting Attorney for the said Spokane County, that he would recommend to the State Board of Prison Terms and Paroles that I serve less than five years in the penitentiary at Walla Walla, Washington. The said Judge Fred H. Witt immediately sentenced me to a term of fifteen years to the said penitentiary and made a statement in open court that he would recommend to the said Board of Prison Terms and Paroles that I serve the full fifteen years and he further stated in open court that if he had his way he would see that I served every day of the fifteen years.

Subsequent to the 10th day of August 1935 I was returned to Spokane County from the State Penitentiary at Walla Walla and on the 4th day of November 1935 I was placed on trial to defend myself from a charge of first degree murder in the said Superior Court with the said Judge Fred H. Witt presiding. A week or ten days before my trial began I informed my attorneys that the said Judge Fred H. Witt had showed passion and predjudice while sentencing me on the said grand larceny charge.

Subsequent to my conviction of first degree murder and prior to the date set for the arguments of the Motion for a new trial, I requested of the said Judge Fred H. Witt in open court that the attorneys appointed by the court to [fol. 131] defend me be withdrawn from the case on the grounds that the said attorneys failed to consult me about the Motion for a new trial and that I wished to secure other counsel to argue the Motion for a new trial.

The said Judge Fred H. Witt denied my request on the grounds that, as I did not employ my attorneys it was not my legal right to discharge said attorneys.

Subsequently the said attorneys argued the Motion for a new trial over my objections as the records will show. The said Judge Fred H. Witt immediately denied the Motion there by depriving me of my constitutional rights.

Thomas Eskridge, Relator.

Subscribed and sworn to before me this 13th day of April, A. D. 1936.

P. E. Mahoney, Notary Public in and for the State of Washington, residing at Walla Walla.

[fol. 132] IN THE SUPREME COURT OF WASHINGTON

MOTION DOCKET—April 24, 1936

No. 26088

(9)

STATE EX REL. THOMAS ESKRIDGE, Relator,

vs.

FRED H. WITT, J. of Superior Court Spokane Co., Wash. State, Respondent

Attorneys: Donovan & Donovan. Ralph E. Foley, Leslie M. Carroll.

FOR WRIT OF MANDATE

Denied.

[fol. 132a] IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 26088

STATE EX REL. THOMAS ESKRIDGE, Relator,

vs.

FRED H. WITT, Judge of the Superior Court for Spokane County, Respondent

JUDGMENT—May 27, 1936

This cause having been heretofore submitted to the Court upon the petition of the relator for a writ of mandate commanding the respondent to enter an order to furnish the relator a transcript of the evidence and an abstract of the record in that certain cause in which the State of Washington is plaintiff and Tom Eskridge is defendant in the records of the Superior Court of the State of Washington in and for Spokane County being cause No. 11114 of said Court, and the Court having fully considered the same and filed its opinion in writing, denying the writ,

It is Ordered, Adjudged and Decreed, that the position be and the same is denied, and that the said State of Washington have and recover of and from the said Tom Eskridge the costs of this action taxed and allowed at Sixteen Dollars ($16.00), and that execution issue therefor.

And it is further ordered, that this cause be remitted to the said Superior Court for further proceedings, in accordance herewith.

[fol. 133] THE SUPREME COURT, STATE OF WASHINGTON,
OLYMPIA

Benj. T. Hart, Clerk. Archie B. Stewart, Deputy Clerk

January 14, 1957.

Mr. Thomas Eskridge,
No. 19590,
P. O. Box 520,
Walla Walla, Washington.

Re—No. 26088—State ex rel. Eskridge vs. Superior Court for Spokane County

DEAR SIR:

On April 24, 1936 the petition for writ of mandate was denied.

There was no transcript filed in case No. 26179—State vs. Eskridge, the Court having used the transcript furnished in the mandate case No. 26088.

I regret I am unable to lend you the transcript. The Rules of Court require me to retain all the papers in a case, except on an order of the Court.

Yours very truly, Benj. T. Hart, Clerk.

BTH/lew

[fol. 134] IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 26088

STATE OF WASHINGTON, EX REL., THOMAS ESKRIDGE, Relator,

vs.

FRED H. WITT, Judge of the Superior Court of the State of Washington in and for Spokane County, Respondent

STATE OF WASHINGTON,
County of Thurston, ss:

I, Robert Holstein, Clerk of the Supreme Court of the State of Washington do hereby certify that the attached and foregoing are full, true and correct copies of the Motion for Writ of Mandate, Affidavit in Support of Motion for Writ of Mandate, Petition for Writ of Mandate, Affidavit in Support of Petition for Writ of Mandate, Motion Docket Entry Denying Petition for Writ of Mandate, Judgment Entered May 27, 1936, and the whole thereof, as the same were filed and entered in the above entitled case on the 14th day of February, the 14th day of April, 1936, the 24th day of April, 1936 and the 27th day of May, 1936 respectively, and now appear of record and on file in my office, and that the denial of the petition for writ of mandate is of record in Motion Docket 8, at page 31, of the records in my office.

I further certify that the letter dated January 14, 1947, addressed to Mr. Thomas Eskridge, is a copy of the letter which was placed in the file of this case.

In Testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Olympia, this 30th day of October, 1957.

Robert Holstein, Clerk of the Supreme Court, State of Washington. (Seal.)

[fol. 135] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 26179

STATE OF WASHINGTON, Respondent,

vs.

TOM ESKRIDGE, Appellant

AFFIDAVIT OF SERVICE OF MOTION TO DISMISS APPEAL—Filed April 15, 1936

STATE OF WASHINGTON,
County of Walla Walla, ss:

P. E. Mahoney, being first duly sworn, on oath deposes and says: that he now is and at the time of making service herein was a citizen of the United States, over twenty-one years of age, and competent to be a witness in the hearing hereof; that he resides at Walla Walla, Washington; that on the 13th day of April, 1936, at the State Penitentiary at Walla Walla, he served the annexed motion to dismiss appeal, with affidavit of Ralph E. Foley, and notice of hearing upon one Tom Eskridge, the appellant therein named, by delivering to and leaving with him personally a true, full and correct copy of said motion to dismiss appeal, with affidavit of Ralph E. Foley, and notice of hearing, certified by affiant to be a true copy of the original motion to dismiss appeal, with affidavit of Ralph E. Foley, and notice of hearing herein, and that he knew the person so served to be the same person named and described in said motion to dismiss appeal, with affidavit of Ralph E. Foley, and notice of hearing as appellant in said action.

P. E. Mahoney.

Subscribed and sworn to before me this 13th day of April, 1936.

L. E. Allen, Notary Public in and for the State of Washington, residing at Walla Walla.

[fol. 136] IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 26179

[Title omitted]

NOTICE OF MOTION TO DISMISS APPEAL

To the above named appellant, Tom Eskridge:

You are hereby notified that the Respondent, State of Washington, will bring on for hearing in the above entitled Court motion for dismissal of your appeal in the said cause on the next regular motion day of said Court; being Friday, April 24, 1936, at the hour of ten o'clock A.M. of said day.

Ralph E. Foley, Leslie M. Carroll, Attorneys for Respondent.

[fol. 137] IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 26179

[Title omitted]

MOTION TO DISMISS APPEAL

Comes now the Respondent by Ralph E. Foley, Prosecuting Attorney in and for Spokane County, Washington, and Leslie M. Carroll, Deputy, and moves the Court for an order dismissing the appeal in the above entitled cause for the reason that the appeal heretofore taken from the conviction, judgment and sentence of the trial court in said cause has not been perfected by filing in the above Court a certified statement of facts, certified transcript of record, abstract of record, and Appellant's opening brief within the statutory time, as provided by the Court in Rule 17 of Rules of Court.

This motion is based upon the records and files herein in this cause and upon the affidavit of Ralph E. Foley hereto attached and made a part hereof.

Ralph E. Foley, Leslie M. Carroll, Attorneys for Respondent.

[fol. 138] AFFIDAVIT OF RALPH E. FOLEY

STATE OF WASHINGTON,
County of Spokane, ss:

Ralph E. Foley, being first duly sworn, on oath deposes and says: That he is and at all times herein mentioned has been Prosecuting Attorney of Spokane County, Washington, and in charge of the prosecution of the above entitled cause; that the appellant, Tom Eskridge, was by information filed in the Superior Court of Spokane County, Washington, charged with the crime of murder in the first degree; that said cause came on for trial before the court and jury on the 4th day of November, 1935, and the jury on the 13th day of November, 1935 returned a verdict of guilty as charged, with a special finding that the death penalty not be inflicted; that appellant, Tom Eskridge, was represented at the trial by Attorneys W. C. Donovan and A. J. Donovan; that motions for new trial and arrest of judgment were filed and argued and that said motions were denied on the 29th of November, 1935; that thereafter counsel for appellant withdrew at appellant's request and the court granted appellant's request to defer sentence until December 4th, 1935, at which time hearing was had and the appellant requested the court to again defer sentence to December 14th, 1935, which request the court granted; that on December 14th, 1935 judgment was entered on the verdict and the appellant was thereupon sentenced to confinement at hard labor in the Washington State Penitentiary at Walla Walla, Washington for the term of his natural life; that appellant thereupon gave oral notice of appeal to the Supreme Court of the State of Washington; that appellant has failed to file in the Supreme Court a certified statement of facts, certified transcript of record, abstract of record and appellant's opening brief, and that more than sixty days have elapsed since the filing of notice of appeal on December 14th, 1935, and therefore affiant believes that under Rule 17 of Rules of Court said appeal should be dismissed

Ralph E. Foley.

Subscribed and sworn to before me this 11th day of April, 1936.

A. C. Colburn, Notary Public in and for the State of Washington, residing at Spokane.

[fol. 139] IN THE SUPREME COURT OF WASHINGTON

No. 26179

(8)

STATE OF WASHINGTON, Respondent,

vs.

TOM ESKRIDGE, Appellant.

Attorneys: Ralph E. Foley, Leslie M. Carroll.

April 16, 1936.

Motion to Dismiss

Granted.

Mr. Ralph E. Foley,
Prosecuting Attorney,
Spokane, Washington.

DEAR MR. FOLEY:

#26179—State of Washington vs. Eskridge

The motion to dismiss appeal, the affidavit of the State and motion for the motion calendar for April 24th, 1936, and an affidavit of service were filed in error yesterday in case #26088 which is the action for a writ of mandate..

These papers have been transferred to case #26179 which is the proper Number of the case.

You may arrange with the Chief Justice in regard to time allowed for the argument of these cases on the day of hearing; the cases, however, will follow each other on the calendar even thought one is a motion to dismiss and the other for a writ of mandate.

We have as yet received no transcript to be filed in case #26179. Is it your intention to furnish a transcript for this case or to use the transcript filed in the mandate case.

Yours very truly, Benj. T. Hart, Clerk.

BTH-D
CC to Mr. Eskridge

[fol. 140] IN THE SUPREME COURT OF WASHINGTON

MOTION DOCKET—April 24, 1936

No. 26179

(8).

STATE OF WASHINGTON, Respondent

vs.

TOM ESKRIDGE, Appellant.

Attorneys: Ralph E. Foley, Leslie M. Carrol.

Motion to Dismiss

Granted.

[fol. 141] IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 26179

STATE OF WASHINGTON, Respondent,

vs.

TOM ESKRIDGE, Appellant.

Spokane County No. 11114

JUDGMENT—May 27, 1936

This cause having been heretofore submitted to the court, upon the transcript of the record of the Superior Court of Spokane County, and upon the argument of counsel, and the Court having fully considered the same and being fully advised in the premises, it is now, on this 27th day of May, A. D. 1936, on motion of Ralph E. Foley, Esquire, of counsel for respondent, considered, adjudged and decreed, that the appeal from the judgment of the said Superior Court be, and the same is hereby dismissed with costs; and that the said State of Washington have and recover of and from the said Tom Eskridge the costs of

this action taxed and allowed at Thirty Two and 85/100 ($32.85) Dollars, and that execution issue therefor. And it is further ordered, that this cause be remitted to the said Superior Court for further proceedings, in accordance herewith.

[fol. 142] IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 26179

STATE OF WASHINGTON, Respondent,

vs.

TOM ESKRIDGE, Appellant.

STATE OF WASHINGTON,
County of Thurston, ss:

I, Robert Holstein, clerk of the Supreme Court of the State of Washington do hereby certify that the attached and foregoing is a full, true and correct copy of the affidavit of Service, Notice of Hearing Motion to Dismiss Friday, April 24, 1936, Motion to dismiss Appeal, Letter from Benj. T. Hart, Clerk, dated April 16, 1936, Motion Docket Entry Granting Motion to Dismiss appeal, and Judgment entered May 27, 1936, and the whole thereof, as the same were filed and entered in the above entitled case on the 15th and 24th days of April, 1936, respectively, and on May 27, 1936, and now appear of record and on file in my office, and that the granting of the motion to dismiss appeal is of record in Motion Docket 8, at page 30, of the records in my office.

I further certify that the letter dated April 16, 1936, is a copy of the letter which was placed in the file of this case.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Olympia, this 30th day of October, 1957

Robert Holstein, Clerk of the Supreme Court, State of Washington (Seal.)

[fol. 143] IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 32466

In the Matter of the Application for a Writ of Habeas Corpus of

TOM ESKRIDGE, Petitioner,

vs.

JOHN R. CRANOR, Superintendent of the Washington State Penitentiary at Walla Walla, Washington, Respondent

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND PETITION FOR WRIT OF HABEAS CORPUS—FILED APRIL 23, 1953.

To the Honorable Chief Justice of the above entitled Court:

This is the original Motion for leave to proceed in Forma Pauperis and Petition for a Writ of Habeas Corpus of Tom Eskridge, Your Petitioner, and it very respectfully represents and shows:

I

Your Petitioner is a Citizen of the United States of America and entitled to the protection of the Fourteenth Amendment to the Constitution of the United States, but because of poverty he has been held in the Washington State Penitentiary at Walla Walla, Washington, without the benefit of redress since the Judgment and Sentence were pronounced in Cause No. 11114 of the Spokane County, Washington, files on or about the 14th day of December, 1935.

II

Your Petitioner is unlawfully imprisoned, detained, confined and restrained of his liberty by one John R. Cranor, as Superintendent of the Washington State Penitentiary at Walla Walla, Washington.

III

That such restraint and detention is not by reason of any final order, decree, judgment of a Court of competent

jurisdiction, or by reason of any order adjudging Petitioner to be in contempt of any court, officer or other tribunal.

IV

That the cause of and/or pretense for said restraint and imprisonment, to the best knowledge and belief of [fol. 144] Petitioner, is a purported judgment and sentence of conviction issued out of and by the Superior Court for Spokane County, Washington, on the 14th day of December, 1935, in Cause No. 11114, wherein, Petitioner was adjudged guilty of the purported crime of Murder in the First Degree and Sentenced therefor, following trial by a jury, to be confined in the Washington State Penitentiary for the term of his Natural Life. By reasons of Petitioner being denied the rights, privileges and immunities, equal protection, and due process of law granted and guaranteed to him by the invocation of the Constitution of the State of Washington (Article 1, Section 22, Supplemented by 10th Amendment to said Constitution), and the State laws made in pursuant thereto, and the Constitution of the United States of America with its mandatory provisions of the Fourteenth Amendment to the United States Constitution, and his confinement by virtue of the aforesaid is illegal and without authority of law, judgment and sentence; he very respectfully Petitions the Court for a Writ of Habeas Corpus, it being the only remedy under existing law to correct the wrongs done him and affords redress at this instant if granted by discharging him in these premises.

V

Your Petitioner challenges the aforesaid purported judgment and sentence before the "Highest Court of the State of Washington"—under and by virtue of Washington's Laws of 1947, Chapter 256, Sections 1, 2, and 3; Article 1, Section 22, Supplemented by 10th Amendment to the Constitution of the State of Washington; and the invocation of the Fourteenth Amendment to the Constitution of the United States of America, with contentions that they are illegal and void, and the illegality thereof consists in this, viz:

1. Petitioner being deprived of ample time to prepare his defense to the crime charged in the Information in a Capital case.

2. Petitioner being placed on trial with Court appointed counsel who were assigned to the case on the 17th day of October, 1935, the date of Petitioner's arraignment on the said charge of first degree murder, and not accorded sufficient time to prepare an adequate defense before proceeding to trial on the 4th day of November, 1935, in spite of the vigorous and duly made protests of Petitioner and Counsel for an extension of time to prepare the case for the defense.

[fol. 145] 3. Petitioner being charged, maliciously, in words of the Information with having a number of aliases, and their mention being made twice for the sole purpose of impugnating the mind of the jury as to Petitioner's position without any direct proof being offered in support of the State's contention, except the connivance in listing the long string of aliases for the purpose of denoting character of defendant—Your Petitioner.

4. No testimony being offered by the State to support the theory that Petitioner did have in his possession, or held in his hand, any kind of a pistol or firearm that may have discharged upon and into the body of the said Harry J. Phillips, victim of the alleged murder.

5. Petitioner not being represented by counsel or legal representation of any kind to protect his position, as only competent counsel can in such cases, when the jury returned its verdict and said verdict being contrary to evidence as aforesaid.

6. Petitioner being deprived of Counsel's aid upon the very rendering of judgment and sentence by the Court which should have been quashed because of the aforesaid reasons and grounds, and as follows:

a. Newly discovered evidence, material for the defendant which he could not have discovered with reasonable diligence and produced at the trial.
b. Accident and surprise.
c. Error of law occurring at trial and excepted to by defendant.
d. Misconduct of the jury.

e. That the jury received evidence, papers and documents not allowed by the Court.

f. That the verdict is contrary to the law and the evidence.

g. The facts as stated in the Information do not constitute a crime.

h. The evidence which was introduced in the case was entirely contrary to the issues involved and were excepted to by defendant. (This was raised on motion to arrest judgment)

i. The Information is duplicious.

j. There was material variance between the allegations of the Information and the proof adduced at the trial as to amount to an entire failure of proof at the trial.

k. There was no evidence nor any attempt to present evidence of robbery or attempt robbery, or of premeditation as the Information charged.

l. The Instructions to the jury were so incoherent and misleading, that it was impossible for them as laymen to understand their duties to the defendant and the verdict.

[fol. 146] m. Had sufficient time been allowed competent counsel to complete an investigation before trial, counsel could have completely exonerated this Petitioner of the charge on which he was tried.

n. Insufficient time was allowed to locate defense witnesses.

7. That Petitioner upon being sentenced to the State penitentiary to a term of Natural Life on the 14th day of December, 1935, immediately filed oral notice of appeal to the State Supreme Court of Washington but before having an opportunty to obtain counsel to aid in prosecuting an appeal from the aforesaid judgment and sentence, was transported on the 16th day of December, 1935, from the Spokane County jail to the State penitentiary at Walla Walla, Washington.

8. Although confined in the above stated penitentiary, Petitioner made repeated efforts through legal channels, in Forma Pauperis, to obtain the transcript of said trial, Cause No. 11114, for the purpose of perfecting an appeal to the Supreme Court of the State of Washington, but said

efforts failing on denial of motions on the 20th day of January, 1936, by the Hon. Fred H. Witt, trial judge.

9. Immediately upon denial of the transcript of the said trial by the lower court as stated above, Petitioner sought a Writ of Mandate in the Supreme Court of the State of Washington, Eskridge v. Witt, re: Cause No. 26088, in further efforts to obtain transcript of trial, but this action also failed.

10. Petitioner had Washington State Supreme Court Cause No. 26179 on file with the Clerk of that Court, under which to file the transcript and perfect the appeal had trial court transcript been furnished him.

11. Petitioner's appeal was dismissed because he could not timely file a transcript in Cause No. 26179.

12. Petitioner being deprived of the right to appeal a first degree murder conviction on account of being an indigent person, was a denial of the rights guaranteed him by the Constitution of the State of Washington which, under Article 1, Section 22, supplemented by the 10th Amendment to this Constitution, provides:

> "In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county in which the offense [fol. 147] in charged to have been committed and the right to appeal in all cases: Provided, the route traversed by any railway coach, train or public conveyance, and the water traversed by any boat shall be criminal districts; and the jurisdiction of all public offenses committed on any such railway car, coach, train, boat or other public conveyance, or at any station or depot upon such route, shall be in any county through which the said car, coach, train, boat or other public conveyance may pass during the trip or voyage, or in which the trip or voyage may begin or terminate. In no instance shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed." (underscore by Petitioner)

and was a denial of the due process of law, and the equal protection of the laws as guaranteed to him by Article XIV, Section 1, of the Amendments to the Constitution of the United States of America, commonly referred to as the Fourteenth Amendment, which states:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." (underscore by Petitioner)

Petitioner has a number of Exhibits which will be submitted by Motion, requesting of Your Honor that they be admitted in evidence in support of Petitioner's allegations in this matter.

Wherefore, because Petitioner is deprived of his liberty by virtue of a proceeding which resulted in his conviction, judgment and sentence against him without being afforded the granted and guaranteed rights, immunities, privileges, equal protection and due processes of law provided by the Fourteenth Amendment to the Constitution of the United States, and with its invocation to the Washington State Constitution, Article 1, Section 22, supplemented by the Tenth Amendment to said Washington State Constitution, and laws made in pursuance thereto. Petitioner prays his Motion for leave to proceed in Forma Pauperis be granted him; that an Order to Show Cause be issued returnable before the above entitled Court, fixing time to do and receive what shall be ordered therein, and that as a result thereof, a Writ of Habeas Corpus be issued in these premises and Petitioner be discharged from said illegal confinement and restraint.

Tom Eskridge, Petitioner pro se.

[fol. 148] AFFIDAVIT

STATE OF WASHINGTON,
County of Walla Walla, ss:

Tom Eskridge, first being duly sworn according to Law, deposes and says: That he is the above named petitioner; that he has read and signed the foregoing Petition and knows the contents thereof, and the same are true as he verily believes.

Affiant further states: That he is a citizen of the United States of America and a Person without property or funds or means with which to obtain funds or property to pay the costs connected with the action he seeks but verily believes himself entitled to the relief sought upon the aforesaid reasons and grounds; that without the above entitled Court issuing an Order granting him leave to proceed in Forma Pauperis, he will be without redress for his grievances. Therefore, Petitioner prays an Order be issued in his behalf by the Chief Justice of the Washington State Supreme Court granting him leave to proceed in Forma Pauperis as prayed for.

Tom Eskridge, Petitioner pro se.

Subscribed and sworn to before me this 19 day of March, 1953.

Allan Mathes, Notary Public in and for the State of Washington, residing in Walla Walla County.

[fol. 149] EXHIBIT TO PETITION FOR WRIT OF HABEAS CORPUS

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF SPOKANE

No. 11114

INFORMATION (R.R.S. 2392)

STATE OF WASHINGTON, Plaintiff,

vs.

TOM ESKRIDGE, alias Thos. Jacobs, alias T. Jacobson, alias J. H. Warren, alias John Lowery, alias George Gregory, Defendant

Comes now the Prosecuting Attorney in and for Spokane County, Washington, and charges the defendant, Tom Eskridge, alias Thos. Jacobs, alias T. Jacobson, alias J. H. Warren, alias John Lowery, alias George Gregory, with the crime of Murder in the First Degree, committed as follows:

That the said defendant, Tom Eskridge, alias Thos. Jacobs, alias T. Jacobson, alias J. H. Warren, alias John Lowery, alias George Gregory, in the County of Spokane, State of Washington, on or about the 30th day of July, 1935, then and therebeing, did then and there wilfully, unlawfully and feloniously, without excuse or justification, and with a premeditated design to effect the death of one Harry J. Phillips, and while engaged in an attempt to commit the crime of robbery, make an assault upon the said Harry J. Phillips with a pistol loaded with powder and leaden bullets, which said pistol so loaded with powder and leaden bullets, as aforesaid, the said defendant, Tom Eskridge, alias Thos. Jacobs, alias T. Jacobson, alias J. H. Warren, alias John Lowery, alias George Gregory, then and there held in his hand and shot and discharged the same at, upon and into the body of the said Harry J. Phillips, and in the manner and by the means aforesaid inflicted upon the said Harry J. Phillips a mortal bullet wound, of which said

bullet wound the said Harry J. Phillips did then and there die.

Ralph E. Foley, Prosecuting Attorney in and for Spokane County, Washington. By Leslie M. Carroll, Deputy.

STATE OF WASHINGTON,
County of Spokane, ss:

Leslie M. Carroll, being first duly sworn, on oath deposes and says: That the above and foregoing information is true as he verily believes.

Leslie M. Carroll.

Subscribed and sworn to before me this 17th day of October, 1935.

Sadie L. Lucas, Deputy County Clerk.

Filed Oct. 17, 1935, Frank C. Nash, Clerk.

[fol. 150] EXHIBIT TO PETITION FOR WRIT OF HABEAS CORPUS

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR SPOKANE COUNTY

Case No. 11114

THE STATE OF WASHINGTON, Plaintiff,

vs.

TOM ESKRIDGE, Defendant

JUDGMENT, SENTENCE AND COMMITMENT UPON VERDICT OF GUILTY

PENITENTIARY

On this 14th day of December, 1935, the above named defendant came into open Court for pronouncement of judgment and sentence, and being asked by the Court if he had any legal cause to show why judgment of this Court should not be pronounced in his case he makes his statement, the defendant being represented by his counsel.

Thereupon, it is now by the Court considered and adjudged upon the verdict of the jury finding the defendant guilty of the crime of Murder in first degree, as charged in said information, that the defendant now before the Court is guilty and it is now by the Court considered, Ordered Adjudged and Decreed, that said defendant be punished by confinement at hard labor in the Washington State Penitentiary, for a term of his natural life, and shall pay the costs of this prosecution taxed at $416.05.

That said defendant shall stand committed to said institution until this sentence is complied with.

The said defendant is hereby remanded to the custody of the Sheriff of said County to be detained and delivered into the custody of the proper officers for transportation to, and confinement in, said institution.

Done in open Court, in the presence of the said defendant, this 14th day of December, 1935.

Fred H. Witt, Judge.

Filed Dec. 14, 1935, Frank C. Nash, Clerk.

[fol. 150a] EXHIBIT TO PETITION FOR WRIT OF HABEAS CORPUS

Case No. 11114

VERDICT OF GUILTY OF MURDER IN THE FIRST DEGREE

We, the jury in the case of

THE STATE OF WASHINGTON, Plaintiff

vs.

TOM ESKRIDGE, Defendant

Find the defendant Guilty, as charged in the information.

Spokane, Washington, Nov. 13, 1935.

C. H. Anderson, Foreman.

Filed 9:05 P.M. Nov. 13, 1935, Frank C. Nash, Clerk.

Recorded, Journal A 249, Page 79.

[fol. 151] EXHIBIT TO PETITION FOR WRIT OF HABEAS CORPUS

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF SPOKANE

No. 11114

STATE OF WASHINGTON, Plaintiff,

vs.

TOM ESKRIDGE, alias Thos. Jacobs, alias T. Jacobson, alias J. H. Warren, alias John Lowery, alias George Gregory; Defendant

SPECIAL VERDICT

If the jury should find the defendant, Tom Eskridge, guilty of murder in the first degree as charged in the Information, the jury will answer the following question:

Question: Shall the death penalty be inflicted upon the defendant, Tom Eskridge?

Answer: No.

Dated this 13 day of November, 1935.

C. H. Anderson, Foreman.

Filed 9:05 P.M., Nov. 13, 1935, Frank C. Nash, Clerk. Journal A-259-80

[fol. 152] EXHIBIT TO PETITION FOR WRIT OF HABEAS CORPUS

June 1, 1936.

Mr. William B. Coffey,
State Parole Officer,
Washington State Penitentiary,
Walla Walla, Washington.

DEAR MR. COFFEY:

We are enclosing herewith Penitentiary Report covering Tom Eskridge, who was sentenced by Judge Fred H. Witt, on December 14, 1935, to Life Imprisonment in Washington Sate Penitentiary, at Walla Walla, Washington, on his

conviction, November 13, 1935, by jury, of the crime of First Degree Murder.

It is the firm belief of the Prosecuting Attorney's office and that of the Court who heard this case that the defendant, Tom Eskridge, never under any circumstances should be permitted to again associate himself with society. His personality is such that he is a dangerous man at any and all times. His whole makeup is surly and he is antagonistic toward all tenets of society.

We have received letters from his sisters expressing the hope that the parole board and the state of Washington will never see fit to release him. His mother resides at Ketchikan, Alaska and has been advised of this situation. We have been informed by the U.S. Marshal of Ketchikan that he has talked with her and he states that his mother has given up all hopes of seeing him again and that the residents of Ketchikan are taking care of her material needs. The Marshal further states:

> "that this man Eskridge appears to be bereft of all common decency and manhood"

He goes on further and states:

> "I only hope that you will se to it that he remains in the penitentiary for the remainder of his natural life."

We have also talked personally with the stepfather of the defendant, and he, too, expresses the hope that the parole board of the State of Washington will see fit never to grant him any parole. Because of the deliberateness and coldbloodedness of this murder we feel we would be derelict in our duty if we did not express our opinion with reference to him to your board.

Respectfully yours, Deputy Prosecuting Attorney.

LMG' W

[fol. 153] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF SPOKANE

No. 11114

STATE OF WASHINGTON, Plaintiff,

vs.

TOM ESKRIDGE, Defendant.

Sentenced on December 14, 1935, by Judge Fred H. Witt, on conviction by jury on November 13, 1935, on a charge of First Degree Murder, to Life Imprisonment in Washington State Penitentiary, at Walla Walla, Washington.

Minimum Sentence Recommended:

By Judge, Life.
By Prosecuting Attorney, Life.
Age: 30.
Residence: California.
Birthplace, Virginia.
Nationality: American.
Occupation: unknown.
Date of arrest: August 3, 1935.
Convicted or pleaded guilty: Convicted by jury.
Industrious or otherwise? Shiftless.
Associates: Poor.
Character: Weak.
Disposition: Surly.
Is he again capable of becoming a good citizen? No.

Circumstances of the Case:

The defendant was placed under arrest August 3, 1935 at Boise, Idaho on the charge of grand larceny in connection with the theft of two typewriters from the Spangle schoolhouse. He pleaded guilty to the charge of grand larceny, was sentenced on August 10, 1935, and after receiving sentence was implicated in the charge of murder in the first degree for the slaying of Harry P. Phillips, a Spokane druggist, and was returned to Spokane County for trial and was convicted. Tom Eskridge was discharged from San Quentin Penitentiary, California, June 19, 1935. He

was to proceed to Ketchikan, Alaska, the home of his mother, but reached Everett, Washington on or about July 20, 1935, where he burglarized a garage, stole therefrom a 77 Willys automobile which was later used in the commission of Spokane County murder. He also stole therefrom extra license plates and an old Fox typewriter. He then, in company with a woman whose identity is at present unknown, proceeded to Spokane County, arriving here the next day. He stopped at an apartment house and quartered his car in a garage about a block away from the place where he lived. On the morning of July 31st he proceeded to the Manito Pharmacy, located in the City of Spokane, where he parked his car across the street from the store and after waiting a period of approximately an hour he entered the drug store with intent to commit a robbery, and in the scuffle that followed Eskridge shot and killed the druggist. After the shot was fired the druggist clung to the shoulders of the defendant, dropped on the curb and died. After the fatal shooting of Mr. Phillips the defendant returned to the apartment house, picked up the lady who stayed with him there, went out and stole another automobile in Spokane County, fled the city, and it was during this flight that he stole the typewriters which resulted in the grand larceny conviction.

[fol. 154] Prior Record:

August, 1935, The defendant, on his plea of guilty, was convicted of robbery with the use of firearms, Spokane County;

In the State of Utah, and on March 7, 1931, defendant was sentenced to the Utah Penitentiary. This sentence was suspended.

On August 29, 1931, defendant was convicted in Ventura, Calif., of the crime of burglary in second degree, and his term was fixed at 7 yrs. and 5 yrs., such sentences to run concurrently. He served in this penitentiary until the 19th day of June, 1935. As stated above, he was then convicted of grand larceny in Spokane County on August 10, 1935.

Leslie M. Carroll, Deputy Prosecuting Attorney:

Approved: Fred H. Witt, Judge.

This three-page document is an exact copy of the letter of transmittal and Prosecuting Attorney's report in the

case of the State of Washington v. Tom Eskridge, Spokane County Superior Court Cause No. 11114, as the same appears from the records of the office of the Prosecuting Attorney of Spokane County.

Hugh H. Evans, Prosecuting Attorney. By John J. Lally, Deputy Prosecuting Attorney.

[fol. 155] IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 32466

In the Matter of the Application for a Writ of Habeas Corpus of

TOM ESKRIDGE, Petitioner,

vs.

JOHN R. CRANOR, Superintendent of the Washington State Penitentiary, at Walla Walla, Washington, Respondent.

STATE OF WASHINGTON,
County of Thurston, ss:

I, Robert Holstein, Clerk of the Supreme Court of the State of Washington do hereby certify that the attached and foregoing is a full, true and correct copy of the Motion for Leave to Proceed in Forma Pauperis and Petition for Writ of Habeas Corpus and the whole thereof, as the same was filed in the above entitled case on the 23rd day of March, 1953, and now appears of record and on file in my office. I further certify that the Information, Judgment and Sentence and Commitment upon Verdict of Guilty, Special Verdict, and Prosecutor's Report are a part of the Return and Answer filed in my office in cause No. 32466 on May 7, 1953, and as called for by Item (13) A, B, C and D of the Stipulation which is a part of the Praecipe.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Olympia, this 28th day of October, 1957.

Robert Holstein, Clerk of the Supreme Court, State of Washington. (Seal.)

[fol. 156] IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 33928

In the Matter of the Application for a Writ of Habeas Corpus of

TOM ESKRIDGE, Petitioner,

vs.

MERLE E. SCHNECKLOTH, Superintendent of the Washington State Penitentiary at Walla Walla, Washington, respondent

CLERK'S CERTIFICATE

STATE OF WASHINGTON,
County of Thurston, ss:

I, Robert Holstein, Clerk of the Supreme Court of the State of Washington, do hereby certify that the foregoing is a full, true and correct transcript of so much of the records and files in the above entitled cause as I am directed by Praecipe and attached Stipulation, and by Mr. Robert W. Graham, counsel for petitioner, to transmit to the Supreme Court of the United States as a record on Certiorari.

I further certify that certified portions of our files in cause No. 26088—*State* vs. *Eskridge;* cause No. 26179—*State* vs. *Cranor* are made a part of this record.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said Court this 16th day of December, 1957.

Robert Holstein, Clerk of the Supreme Court of the State of Washington. (Seal.)

[fol. 157] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1956

No. 383 Misc.

TOM ESKRIDGE, Petitioner

vs.

MERLE E. SCHNECKLOTH, Superintendent of the Washington State Penitentiary.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI —April 1, 1957.

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby granted; and that the petition for writ of certiorari be, and the same is hereby granted. The case is transferred to the appellate docket as No. 873 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.